THE PROVISIONAL CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA: PROCESS, ARCHITECTURE, AND PERSPECTIVES

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Abstract

Much ink has been spilled over the Republic of Somalia. Somaliland became synonymous for pariah state and was in the spotlight and in the immediate interest of international organisations and intergovernmental bodies due to the continuous deadlock and unsolvable political turmoil. Quite recently, the country attracted the interest of the international community as a new Constitution was adopted, and thus the Republic of Somalia joined the club of numerous African countries, such as Tunisia, Egypt, South Sudan, and Libya with a new constitutional order. The Constitution was adopted with the aim of terminating a long period of tensions, warfare, political turmoil, and often chaos, by establishing efficient political institutions and introducing governance that is more responsive and accountable to its people. In this Note, I review and evaluate the Somali Constitution, while the aim is to provide an overview of the role of the constitutional drafting process and the new constitution in the political era of the post conflict Somalia. The analysis begins by considering the recent political environment of Somaliland, and the whole process that led to the new Constitution. This will be followed by a detailed discussion about the major components of the Constitution, elaborating on the architecture of the polity. Finally, the last part will be devoted to an attempt to highlight the benefits and the deficits of the new constitution.

Keywords

Transitional Constitutionalism, Somalia, Failed States

1 Introduction

Much ink has been spilled over the Republic of Somalia. Somaliland became synonymous for pariah state and was in the spotlight of international organisations and intergovernmental bodies due to the continuous deadlock and unsolvable political turmoil. Quite recently, the country attracted the interest of the international community because a new constitution was adopted. The Republic of

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Somalia thus joined the club of numerous African countries with a new constitutional order, such as Tunisia, Egypt, South Sudan and Libya.¹ This new constitution was adopted with the aim of terminating a long period of tension, warfare, political turmoil, and often chaos by establishing efficient political institutions and introducing governance that is more responsive and accountable to its people.

In this note, I review and evaluate the Provisional Constitution of the Republic of Somalia (*Provisional Constitution, Constitution*). The aim is to provide an overview of the role of the constitutional drafting process and of the new Constitution in post-conflict Somalia. The analysis begins by considering the recent political environment of Somaliland, the role of various actors and the process that led to the new Constitution. This will be followed by a discussion of the major components of the Constitution. Finally, the last part will highlight the benefits and deficits of the Provisional Constitution.

2 Political Turmoil in Somalia: Developments leading to the New Constitution

It is essential to be aware of the process by which the Provisional Constitution of the Federal Republic of Somalia was drafted and ratified. The examination of past constitutional processes and the stance of various actors will illuminate how the constitutional framers decided to solve the foreseen constitutional dilemmas, to combine various interests and to resolve long-standing problems.

The Republic of Somalia, which was a former British and Italian colony, gained its independence in 1960. A new constitution was adopted by national referendum. In 1979, another national referendum led to the replacement of the constitution. However, the constitutional order of Somalia was overthrown in the 1990s, and since then, the country and its population have suffered from civil war, lack of efficient governmental structures, hunger, drought, conflicts and isolation.² A series of reconciliation initiatives and peace conferences to restore normality and the constitutional order were held under the auspices of various parties such as the UN, the so-called 'frontline states' of Kenya, Ethiopia,

¹ All these new constitutions in Africa permit us to describe this phenomenon as a new wave of constitution making. For a more detailed analysis on the wave of constitution making see J Elster, 'Forces and Mechanisms in the Constitution-making Process' (1995) 45 *Duke LJ* 364, 369.

² J A Mubarak, *From Bad Policy to Chaos in Somalia* (1996) 26; J Bahadur, *The Pirates of Somalia; Inside their Hidden World* (2011) 55; J Fergusson, *The World's Most Dangerous Place* (2013) 20.

and Djibouti, and the Islamic states of Egypt, Libya and Yemen, but they were unsuccessful.³

Nonetheless, in 2000, the Somali National Peace Conference, the so called Arta Process, reached an agreement and a temporary constitution with a three years life span, the Transitional National Chapter, was adopted.⁴ The process was held under the auspices of the Djibouti government and was endorsed by the UN and Egypt. This new constitution was successful in the sense that power sharing between the four major clans of Somalia was proportionate. Although the Transitional National Government that was formed was the first significant attempt to achieve normality and to represent the people of Somalia internationally, the expectations were not met.⁵ The Transitional National Government failed to produce national unity and opposition was formed, backed by Ethiopia and decentralised Somali authorities under the umbrella of the Somali Reconciliation and Rehabilitation Council (SRRC), led by Puntland President Abdulahi Yusuf.⁶

Even before the Transitional National Chapter expired, the new deadlock led to another initiative, the Mbagathi Talks in 2002. In essence, the aim of this initiative was to bring the Transitional National Government and the rival coalition to a political settlement. After a series of discussions and negotiations led by the Inter-Governmental Authority for Development,⁷ a new constitutional document was drafted, the Transitional Federal Charter of 2004.⁸ Accordingly, the new government was based on the federal paradigm⁹ and was transitional in nature.¹⁰ The transitional character of the constitution was not signalled with a sunset clause, but the text of the Transitional Federal Charter explicitly prescribed the process for the drafting of a new constitution.¹¹

³ A Le Sage, 'Somalia: Sovereign Disguise for a Mogadishu Mafia' (2002) 29 *Rev of African Political Economy* 132.

⁴ See K Menkhaus, 'Somalia: A Situation Analysis and Trend Assessment', Writenet Paper Commissioned by United Nations High Commissioner for Refugees, Protection Information Section, August 2003, <<http://www.refworld.org/docid/3f7c235f4.html>> [accessed 16 July 2014] 10. For more details on the Arta Process, see A P Kasaija, 'The UN-led Djibouti Peace Process for Somalia 2008–2009: Results and Problems' (2010) 28 *J of Contemporary African Studies* 261, 264.

⁵ For a detailed analysis of the reasons of the Transitional National Government's failure, see Le Sage, above n 3, 133ff.

⁶ K Menkhaus, 'The Crisis in Somalia: Tragedy in Five Acts' (2007) 106 *African Affairs* 357, 359

⁷ K Menkhaus, 'Somalia: What went Wrong?' (2009) 154 *The RUSI Journal* 6, 7.

⁸ Menkhaus, above n 4, 15.

⁹ Transitional Federal Charter for the Somali Republic, Art 11(1).

¹⁰ *Ibid*, Art 11(3a).

¹¹ *Ibid*, Art 11(3b).

Along the path to democracy and stability, political tension and armed confrontation were not absent. The Transitional Federal Government and its President Abdulahi Yusuf failed to gain popular support as they were seen as orchestrated by Ethiopia.¹² In addition, the members of the previous regime, now forming the Mogadishu Opposition, were marginalised.¹³ At the same time, another front emerged, the Islamic Court Union with strong political and militia force.¹⁴ Eventually, the Transitional Federal Government was left without legitimacy and control over the country.

In June 2008 a UN led peace conference in Djibouti took place to bridge the gap between Somalia's Transitional Federal Government and the Alliance for the Re-liberation of Somalia which was a coalition between the Mogadishu opposition and the moderates of the Islamic Court Union.¹⁵ The so called Djibouti Accord was an 11 point agreement and among its consequences was a power-sharing deal between Somalia's Transitional Federal Government and the Alliance for the Re-liberation of Somalia that doubled the size of the parliament in order to bring opposition figures into power.¹⁶

The landmark event for the termination of the transitional period and the acceleration of the constitutional drafting process was the Kampala Accord of 2011.¹⁷ However, this development was not welcomed by civil society in Somalia. As was testified before the House of Commons Foreign Affairs Committee, 'there is a perception amongst many Somalis that decisions that affect their lives are often internationally driven, with little local consultation. This was evidenced in the reaction to the recent Kampala Accord on political transition in Somalia'.

Nonetheless, the Kampala Accord paved the way for the Garowe Process,

¹² Menkhaus, above n 7, 7.

¹³ Menkhaus, above n 6, 362.

¹⁴ Ibid, 370.

¹⁵ For more details on the armed conflict that broke out in February 2006 between the Transitional Federal Government and a board umbrella Group of Islamists see Menkhaus, above n 7, 7; Kasaija, above n 4, 269.

¹⁶ Decisions of the High Level Committee Djibouti Agreement, 25 November 2008, <<http://www.ucdp.uu.se/gpdatabase/peace/SOM%2020081126.pdf>> [accessed 16 July 2014] para 5; see Kasaija, above n 4, 272.

¹⁷ Broadly speaking, it declared the termination of the transitional period by extending it for one year without further extension. See 'Agreement Between the President of the Transitional Federal Government of Somalia and the Speaker of the Transitional Federal Parliament of Somalia, Made in Kampala on 9th June 2011' (The Kampala Accord) <<http://unpos.un-missions.org/Portals/UNPOS/Repository%20UNPOS/110609%20-%20Kampala%20Accord%2028signed%29.pdf>> [accessed 16 July 2014]; see also K Menkhaus, 'Somalia at the Tipping Point?' (2012) *Current History* 169, 170.

during which the constitution-making process was defined in detail.¹⁸ It is remarkable that according to this process an effort was undertaken to widen the political process and making it even more representative. However, the Garowe Process was also criticised as an internationally driven initiative.¹⁹

Eventually, the National Constituent Assembly, consisting of 825 delegates, debated the draft constitution and this drafting process concluded in 2012 with the adoption of the Provisional Constitution of Somalia.²⁰ The Constitution was not approved by a referendum, as it was initially supposed to be,²¹ but on 1 August 2012, the National Constitutional Assembly approved it by an overwhelming majority.²²

We have seen that the developments leading to the current constitutional regime was full of complexities, international interventions and risks. The landmark events during this constitutional drafting process were internationally driven and lacked social consensus. As a result, every new constitutional government was susceptible to strong opposition.²³ However, since the breakdown of Somalia in the 1990's, every peace effort succeeded in fostering the institutional prerequisites of a legitimate government winding down the centrifugal forces. In particular, the transition from the Transitional National Government to the Transitional Federal Government introduced the federal character of the constitution so as to ameliorate the power sharing between different actors, while, as will be seen below, references of the Provisional Constitution to the Shari'ah, which did not exist in the Transitional Federal Charter, reflect an influence of the Alliance for the Re-liberation of Somalia, and represented an innovation heralding the religious sentiment of Somali civil society.

Remarkably, the most modern mechanisms, such as temporary and interim constitutions and constitutional experimentation, were used to tackle the prob-

¹⁸ Menkhaus, above n 17, 170; Foreign Affairs Committee, *Piracy off the Coast of Somalia*, Tenth Report of Session 2010-2 (HC 1318) 115.

¹⁹ L. Hammond, 'Somalia Rising: Things Are Starting to Change for the World's Longest Failed State' (2013) 7 *J of Eastern African Studies* 183, 184.

²⁰ A O Shuriye, 'The Inveterate Failures of the International Community on Somali Impasse' (2012) 12 *Middle-East Journal of Scientific Research* 927, 934.

²¹ Transitional Federal Charter for the Somali Republic, Article 11(3b).

²² Of the 645 members of the constituent assembly present, 621 backed the document and 13 voted against, while 11 abstained. See 'Somali Leaders Back New Constitution', *BBC News Africa*, 1 August 2012 <<http://www.bbc.com/news/world-africa-19075685>> [accessed 16 July 2014].

²³ For more discussion on how the external attempts at mediation pre-empt the emergence of a stable social consensus, see E Afsah, 'Constitution-Making in Islamic Countries – A Theoretical Framework' in R Grote & T Röde (ed), *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* (2011) 475, 477.

lems typical for constitution-making. Elster rightly remarks that the constitutional drafting process is surrounded by a paradox. On the one hand there is an urgent need for a new constitutional document, on the other hand, there is not enough time for sufficient and productive consultation.²⁴ However, interim and temporary constitutions permit constitution drafters to defer to the future such decisions and to reconsider in order to develop better constitutions.²⁵

The constitutional history of Somalia shows that one of the most pressing problems was the failure of each newly formed government to follow through with the reconciliation efforts to produce a government of national unity. The following part of this note examines selected aspects of the Provisional Constitution in more detail. The aim is not only to present its most important components, but also to test whether the new Constitution enshrines the principles and the culture of the Somali civil society.

3 The Fundamentals of the Provisional Constitution

The Provisional Constitution of the Federal Republic of Somalia is the supreme law of Federal Republic of Somalia.²⁶ The Constitution is comprised of 15 chapters and 143 articles. Chapters 5 and 12 flesh out the principle of federalism, Chapters 6 to 9 embody the separation of powers and Chapter 10 introduces the Independent Commissions. Chapter 2 encompasses the Bill of Rights, while the procedure for amending the Constitution is prescribed in Chapter 15 under the Title 1.

The Provisional Constitution followed the previous pattern of the Transitional Federal Chapter and declared Somalia as a federal state.²⁷ Federalism seems to correspond to the diversity of the Somali society as, before the decolonisation, Somalia was divided into several regions and a decentralised system of governance aims to be closer to the people.²⁸ The term 'Provisional' Constitution is fraught with ambiguity. On the one hand, it may have been used in contrast to

²⁴ Elster, above n 1, 394.

²⁵ See V C Jackson, 'What's in a Name? Reflections on Timing, Naming, and Constitution-making' (2008) 49 *William and Mary LR* 1249, 1282.

²⁶ Provisional Constitution, Art 4.

²⁷ Provisional Constitution, Arts 3(3) and 48

²⁸ However, the opinion has been expressed that Somalia is a homogenous country and therefore such provision was unnecessary, see Shuriye, above n 20, 934.

state constitutions and to imply a hierarchy between federal and states' constitutions.²⁹ On the other hand, it may have been used in contrast to the transitional constitutions.

The Constitution creates a two-level government and distinguishes two types of competences. Article 54 contains an exhaustive list of competences to be exclusively exercised by the Federal Government: Foreign Affairs, National Defence, Citizenship and Immigration, and Monetary Policy.³⁰ In addition, Article 50, which is open textured, recognises shared competences between the Federal Government and member states based on the principle of subsidiarity.³¹ There are four main organs: the President, the bicameral Federal Parliament, the Federal Government, and the Constitutional Court. The system of governance is determined by the division of powers between these organs, exercised within the framework of the federal, republican and parliamentary political system.

The President is the Head of the State.³² Presidential powers are enumerated in Article 90. The President exercises a variety of competences. These include legislative oversight, as presidential assent on bills makes them to laws;³³ administration, as the President is the head of the armed forces;³⁴ regulatory competences, as the President appoints the Prime Minister³⁵ or declares a state of emergency;³⁶ and judicial authority, as the President pardons offenders and commutes sentences on the recommendation of the Judicial Service Commission.³⁷

The President is elected by the two Houses of the Federal Parliament.³⁸ The required supermajority of two thirds during the first and the second voting rounds aims to enhance the legitimacy of the Presidency. The Constitution makes detailed provision for the election procedure of the President; however, it does not cover every eventuality. Importantly, there is no provision regarding the event of a tie, for example between three candidates in the final vote of the second round. In addition, in the event of the replacement of the President by the Speaker

²⁹ The hierarchy between the Federal Constitution and the State Constitutions is explicitly mentioned in Article 51(4) of the Provisional Constitution.

³⁰ *Ibid*, Art 54.

³¹ *Ibid*, Arts 50(b) and 50(f).

³² *Ibid*, Art 87(la).

³³ *Ibid*, Art 90(f) and Art 85.

³⁴ *Ibid* Art 90(b).

³⁵ *Ibid* Art 90(d).

³⁶ *Ibid* Art 90(a).

³⁷ *Ibid* Art 90(p).

³⁸ *Ibid*, Art 89.

of the House of the People,³⁹ the question arises whether the acting President, who is a member of the Federal Parliament, would have the right to vote in the presidential election.

The term of office of the President is four years⁴⁰ and there is no provision relating to term limits. In addition, ambiguity exists in Article 90, which gives the President wide discretion to appoint the Prime Minister. The Federal Government *latu sensu* is comprised of the Council of Ministers⁴¹ while the head of the Federal Government is the Prime Minister.⁴² According to Article 99, the Council of Ministers has wide powers and general competence. Nonetheless, the competences of the Prime Minister reflect his special status in the context of the Federal Government, namely his power to appoint the members of the Council of the Ministers⁴³ or his power to dissolve it with his resignation.⁴⁴

The Constitution concentrates law-making powers in the Houses of the Federal Parliament, giving the Prime Minister and the Council of Ministers effective control over the legislative agenda. For instance, the Council of Ministers may initiate draft legislation⁴⁵ and it has exclusive competence on the annual budget. Remarkably, this is mentioned three times in the Constitution.⁴⁶ Although this does not create any interpretative problems, it does not advance the constitutional drafting economy either.

As a counterweight, the Prime Minister and the Council of Ministers require a vote of confidence by the House of People with a simple majority of the total members.⁴⁷ Thus, the executive remains dependent on and accountable to the legislature. The Federal Parliament is bicameral, comprising the Upper House and the House of the People.⁴⁸ Their competences are listed in Articles 71 and 69, respectively. The Upper House represents the interests of the member states and safeguards the federal system,⁴⁹ while the House of the People represents the citizens.⁵⁰

³⁹ Ibid, Art 95.

⁴⁰ Ibid, Art 91.

⁴¹ Ibid, Art 97(1).

⁴² Ibid, Art 100a.

⁴³ Ibid, Art 97(3).

⁴⁴ Ibid, Art 97(4).

⁴⁵ Ibid, Art 80(1).

⁴⁶ Ibid, Arts 69(1)(b), 79(1)(b) and 79(1)(c), and 80(1)(b).

⁴⁷ Ibid, Art 69(1)(d).

⁴⁸ Ibid, Art 55.

⁴⁹ Ibid, Art 61(3).

⁵⁰ Ibid, Art 61(2).

The legislative process is described in Articles 82 to 85. Institutional dialogue in case of disagreement between the Upper House and the House of the People is based on a supermajoritarian voting system, which enhances consensus in the law enactment process.⁵¹ The absence of a legislative veto by the Upper House prevents deadlocks in the law enactment process,⁵² which is concluded in the House of the People.⁵³

Despite its significant competence, the Upper House does not have equal constitutional status with the House of the People.⁵⁴ The relationship between the House of the People and the Government is defined by parliamentary scrutiny of the Government and the accountability of the Government to Parliament. However, the President has to dissolve the House of the People if it fails to approve the Council of Ministers of the program of the Government.⁵⁵

The Constitution adopts the concentrated model of constitutional review,⁵⁶ granting the Constitutional Court a monopoly over constitutional review. The formation of the Constitutional Court is regulated in Article 109B. The Judicial Service Commission nominates the judges and the House of the People approves them. There is no supermajority rule limiting the power of the governing party in the lower house when making appointments to the Constitutional Court. This could raise questions regarding the strict separation of powers and judicial independence. The Constitutional Court has the supreme power to review acts of the Federal Parliament in case they fail to conform to the Constitution.⁵⁷ Its competences are described in Article 109C.

Finally, Chapter 10 incorporates in the constitutional system the Independent Committees and the Office of Ombudsman. The Constitution prescribes a series of Committees of different kinds and subject matters.⁵⁸ The whole constitutional system (President, Council of Ministers and Houses of Parliament) is involved in the appointment of the members of the Committees.⁵⁹

⁵¹ The supermajority requirement enhances bargaining and compromise. For more discussion on negotiation democracy, see K Armingeon, 'The Effects of Negotiation Democracy: A Comparative Analysis' (2002) 41 *European J of Political Research* 81.

⁵² The Provisional Constitution, Art 81(2).

⁵³ *Ibid*, Art 81(4).

⁵⁴ *Ibid*, Arts 47, 69(1)(d), 109B and 113.

⁵⁵ *Ibid*, Art 67 in combination with Art 69(o).

⁵⁶ For a detailed discussion on the models of constitutional review, see S Gardbaum, 'The New Commonwealth Model of Constitutionalism' (2001) 49 *AJCL* 707.

⁵⁷ Provisional Constitution, Arts 4(2) and 86(1).

⁵⁸ *Ibid*, Art 111.

⁵⁹ *Ibid*, Art 112.

4 Problems and Prospects: A Preliminary Assessment

Constitution-making was always a great concern of scholars. Undoubtedly, lawyers have a leading role in every constitution drafting process. Nonetheless, such documents are not just legal conventions. The political, cultural and societal realities of every country should be enshrined in such documents. Otherwise the constitution-making process will not be fruitful.⁶⁰

From a constitutional engineering point of view, and to the credit of its drafters, the most modern ideas of constitutionalism are reflected in the text of the Constitution. Constrained parliamentarianism, supermajority requirements during the legislative process (signalling the great need for consensus in Somali political life), as well as the recognition of independent bodies with supervisory authority to enhance accountability of the political institutions are some of the innovative features of the Constitution. Without overestimating the impact of sound institutions and creative constitutional engineering in the face of a complex and often divisive political, diplomatic, economic, ethnic, cultural and social reality, the Constitution, despite its shortcomings, could be the organisational basis of a peaceful and prosperous Somalia.

At the same time, criticism has been raised on a variety of grounds. First, it seems that the Constitution was drafted fast and without proper consideration as it was completed within several months.⁶¹ However, the most interesting concern is based on the impression that the new Constitution lacks a sufficient link to the Somali civil society as the whole process was UN led.⁶²

In fact, the UN and the international community pulled the levers of the constitutional drafting process and therefore it was felt that the role of Somali civil society was more passive and less engaged.⁶³ That said, it was originally planned to have the new Constitution ratified with a referendum but the realities in Somalia did not permit the realisation of this plan.⁶⁴ Instead, it was ratified by a representative body with an overwhelming majority. Undoubtedly,

⁶⁰ Samuels adopts two criteria for the positive assessment of any constitution. The first is whether a constitution brings democracy and the second is whether it contributes to sustainable peace. See K Samuels, 'Post-Conflict Peace-Building and Constitution-Making' (2006) 6 *CJIL* 663, 665.

⁶¹ Menkhaus, above n 17, 170; Hammond, above n 19, 184.

⁶² M Harper, 'Somalia: Whose Country is it, Anyway?' (2013) 37 *Fletcher Forum of World Affairs* 161, 166.

⁶³ For more details on the importance of public participation during constitutional drafting processes, see Afsah, above n 23, 506.

⁶⁴ BBC reported that the referendum did not take place for security reasons as parts of the territory

the referendum process would have engaged Somali civil society to a greater degree and it remains to be seen whether the prescribed process to review the Constitution and its ratification by a referendum⁶⁵ will fill this gap and foster a nexus with Somali civil society.

Pertaining to specific provisions, the analysis below will highlight some technical ambiguities caused by specific constitutional regulations. First, the ambiguous and imperfect formulation of key principles of Somali federalism and the lack of constitutional conventions may contain the seed of future tensions, conflicts and instability, which have plagued the country for years, if not decades. In particular, the boundaries between federal and states' competences are not clear. This could lead to conflicts regarding the ambit of federal power. History shows that in any new federal state, the delineation of federal and states' powers is a politically sensitive issue, which could threaten the stability and even the unity of the state. This is further exacerbated by the political, societal and historical characteristics of Somalia (for example, the *de facto* cession of Somaliland). In that context, clarifying and delineating federal and state powers should be a priority.

In addition, two essential characteristics for a stable government—the nature of a country's party system, and the majority-building capacity of a country's electoral system—are both subject to special legislation adopted by the House of the People.⁶⁶ Nonetheless, this provision is under further revision.⁶⁷ However, the deferral to future lawmakers decision-making on certain constitutional issues is not always a negative development. On the contrary, it is a useful mechanism to limit decision cost and error cost during the constitution-making process.⁶⁸

Concerning the competences of the Head of the State, it is unclear whether the President is under a legal obligation to appoint as Prime Minister the leader of the political party enjoying the overall majority of seats in Parliament. This could be less problematic in countries with strong and long parliamentary traditions, where constitutional customs and conventions have been developed. As Somali democracy is in *statu nascendi*, such an ambiguity could trigger political crises and instability.

of Somalia are under the control of al-Shabab, a militia linked to al-Qaeda; see 'Somali Leaders Back New Constitution', *BBC News*, 1 August 2012, < <http://www.bbc.com/news/world-africa-19075685> > [accessed 6 July 2014].

⁶⁵ Provisional Constitution, Art 137.

⁶⁶ *Ibid*, Art 47.

⁶⁷ *Ibid*, Schedule 1 (C6).

⁶⁸ For further discussion on the mechanisms to postpone and delegate to future lawmakers constitutional issues, see R Dixon & T Ginsburg, 'Deciding Not to Decide: Deferral in Constitutional Design' (2011) 9 *IJ Con L* 636.

Likewise, while the text of the Constitution endorses the system of a concentrated model of constitutional review, there is no explicit provision concerning the power of the Constitutional Court to review legislative procedure (*interna corporis*) and the hierarchical role of the Shari'ah might create problems of interpretation.⁶⁹ Finally, and as a matter of both structure and substance, there is no preamble to set out the values of the civil society and to epitomise the nexus between the text of the Constitution and the people of Somalia. However, by comparing the new Constitution and the Transitional Federal Chapter, the references of the former to the Shari'ah is a clear effort to encapsulate the religious sentiment of Somali civil society.

5 Conclusion

Interpreting constitutional drafting results, especially when the outcomes are really fresh, is always a risky business. In the case of Somalia, the new Constitution is in its early application since the ratification. The rush of the international community to proceed as soon as possible with a new Constitution points to a deep concern and sound interest in bringing peace and prosperity to Somalia. The political wheel must keep on turning and the new Constitution signals a new start. The recent Constitution does not merely encapsulate the historical circumstances of the present *status quo* in Somalia, but like a palimpsest, embodies the constitutional *acquis* and the lessons learned from past constitutional experiences. Now, the new Government, enriched with a new constitutional cloak must think carefully about how it can better realise its ideals for democracy, reconciliation and peace in this new regime. Nonetheless, it has to be acknowledged that constitutional documents are not panacea solving all problems. It remains, at the time of writing, to be seen whether the new Constitution will manage to bring lasting peace and stability in the region paving the way for a prosperous future.

⁶⁹ Provisional Constitution, Art 2(3).