

# Somalia's Political Crises in the Absence of Independent System of Judiciary: An Analysis of Current Issues

Abdirahman A. Osman <sup>1</sup>

<sup>1</sup> Mogadishu, Somalia

Correspondence: Abdirahman A. Osman, Faculty of Law, SIMAD University, Mogadishu, ON., Hodan, Zoobe, Somalia. Tel: 252615956806, E-mail: [maan61@simad.edu.so](mailto:maan61@simad.edu.so)

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## **Abstract:**

This study aims to investigate the impact of judicial role absence as an independent State organ on the repeated political crises that occur in Somalia. It also investigates the causation of such judicial non-independence since the written documents describe it as an autonomous authority clearly without shadow. The study concludes that there are many challenges that prevent the independent of the judiciary organ including but not limited to absence of the principle of separation of powers, disregard of constitutional Articles, corruption and judicial disempowerment. To achieve the aims of the study, the researcher implemented the paradigmatic analysis that intended to investigate the legal texts with the regards to the related problems.

**Keywords:** *Somalia, political crises, independent judiciary, absence of judiciary, nation building*

## **1. Introduction:**

In general, in order to effectively protect the judiciary, the independence of the judicial system is needed (Bernatt, 2019), since an independent judicial system functions as an essential foundation for constructing a nation and national coherence. It signifies that the judicial system should be independent both as organ and as individual personnel from all pressure groups including other governmental organs, executive and legislative, as well as political parties, local groups, and bureaucratic elite (Farooq, Rafique, & Qumber, 2016). Somalia lacks a well-functioning governmental institutions for almost three decades. This puts the political culture and social life of the people at stake, as there is no predictable political estimations that exist in Somalia. Moreover, it seems that all political elites in Somalia are disregarding the judicial system of the country, and that there is no any politician who has a clear political ideology for preserving the rule of law, which undermines both the judicial independence and political stability in the country.

Normally, to promote prosperity, any region needs a good governance atmosphere characterized by stability, collective collaboration along with rule of law, and required that there are good economic opportunities (Arteta & Hurtado, 2005). In a nutshell, both the rule of law and proper legal organizations remain the *sine qua non* to development, while the deficiency of rule of law signifies the absence of normativity and shortage of regulations, arbitrariness paralleled with chaos, exploitation and confusion. Furthermore, poorly constructed rules and procedures may be barriers to progress (Rittich, 2006), and to remove such barriers to the progress there is a need to effective judicial system having independent, self-governing to ensure that the executive and legislative abide the constitutional Articles and other laws of the country.

## **2. Research Objectives:**

This article aims to analyze the nexus between the un-independent judiciary system and the political stuck challenges in Somalia. First, I will provide a general overview of judicial independence in Somalia by making thorough analysis to provisions prescribed under the 2012 Provisional Constitution, which many political elites hoping that it may ease challenges from judiciary system by creating a new era and reform the system. Next, I will show how weak are institutional framework of judiciary system in Somalia, starting from its failure to access to justice for normal citizens to its silent from big political and constitutional crises. Then, I will try to talk in depth the role of independent judiciary in resolving Constitutional crisis and promoting political stability, and to elaborate the flaws that challenge Somalia's judicial system to participate i.e., to take its role for stabilizing current political tensions. Finally, I will urge that there is an extended gap between the written rules and the fact in the ground that undermine the independence of judiciary.

## **3. Research Methodology:**

In this study, the researcher used qualitative research methodology, specially, phenomenological approach, by reading written documents relevant to the topic such as books, journal articles and legal texts, to describe and analyze the phenomena in an actual and accurate way, by illuminating the provisions of Somalia's 2012 Provisional Constitution and its stand in the independence of judiciary system. On the theme of this study, the researcher will, also, deeply analyze the political phenomena that exist in Somalia which encompasses more challenges and crisis.

#### **4. Judicial Independence in Somalia:**

In this section, the notion of judicial independence will be elaborated in detail along with subordinate and closely related concepts with it, including the judicial supremacy, good governance, the rule of law and the separation of powers. It will also combine with the necessary analysis for the provisions of 2012 Provisional Constitution associated with each concept as well as explaining the linkage between those concepts.

##### *4.1. The Concept of Independent Judiciary:*

As there are three different state organs, the judiciary is the organ in charged for settlement of disputes, defining and interpreting of the law, where there is no clear legislation that ensure the rights and freedoms of citizens, promotion of rule of law and advocating constitutionality (Saiful-Islam, 2018). For that, independent and neutral judiciary is more vital to ensure that there are no right infringements, preserve the rule of law and protects against the oppression and autocracy.

Judicial independence indicates that the judiciary organ is distinct from the other two organs of the government in terms of institution, purpose and obligation. It implies that the judiciary should be a self-governing institution and judiciary individuals who are the judges should be free from anxiety of any kind for the condemnations relating to the consequences of their impartialness decisions. But that does not suggest the establishment of an independent organization which is totally free from the control and leverage of the other two governmental organizations, namely, executive and legislative. It is only free from such activities that may immobilize the smooth-running of judicial functions and hinder judiciary as a separate unit (Singh, 2000). In that context, an independent judiciary system will have two dimensions. On one hand, institutional independence dimension which implies that the judiciary as a distinct organ has the ability to challenge intrusions from other organs of the government who deal with political issues and thus, conserve the separation of powers. On the other hand, the decisional independence dimension which indicates the ability of judicial individuals to reach a judgment without fear or pressure that can influence with their ability to decide impartialness and thus, preserve the rule of law. although that does not mean that the judges have autonomous authority from all external pressures, it is free from, only, such pressures that can prevent judges from preserving the rule of law (Geyh, 2008).

According to Singh “the most important aspect of judicial independence is its constitutional position. Just as the constitution provides for the composition and powers of the executive and the legislature, it should also provide for the judiciary (Singh, 2000).” From this perspective, the 2012 Provisional Constitution of Somalia has prescribed the judicial authority in chapter 9, but in this section, I will concentrate on Article 106 of the constitution that stipulates the judicial independence.

In consistent with the Constitution, Article 106 Paragraph (1), provides institutional independence of the judiciary as it clearly defines that the judiciary as an institution is a separate entity from other two governmental institutions, and that neither executive branch of the government nor the legislative are allowed to interfere the judicial functions as long such functions are merely judicial tasks. In Paragraph (2), it provides the decisional independence of the judiciary, it advocates that proceedings of any kind, either civil or criminal, cannot be proceeded on the individual persons who carry on the judicial functions given that they are performing the course of their work. In Paragraph (3) it provides a privilege to the judges, which gives more security in the course of their duty, that they cannot be arrested nor can be investigated both in person as well as their homes, unless such search or arrest is conducted under the authorization of the Judicial Service Commission. Onto the context of the Constitution, we can comprehend that it acknowledges judicial independence as it has been discussed by intellectuals and it centered that to get judicial independence there should be judicial service commission which is an independent committee serving judicial related matters, but the question is, does a Judicial Service Commission exist?

##### *4.2. The Rule of Law:*

Although, there is no agreed definition of what is exactly means the rule of law but some authors claim that, in order to understand the concept deeply, its necessary to ask ourselves the objective of law because the objective of law itself serves as requirement of the rule of law. According to Richard Fallon he describes the rule of law as the one that “protects against anarchy, allows people to plan their affairs with reasonable confidence, and guarantees against arbitrariness”. According to him the purpose of law is confined in five motifs which are (a) the ability of legal rules to drive the behavior of citizens; (b) its effectiveness to guide the citizens since its all

about the efficacy; (c) the stability and rationality of legal rules to enable future planning activity; (d) sovereignty of legal authority; and (e) independent justice mechanisms (Kleinfeld, 2006)

In fact, many scholars have seen that the rule of law is more essential to post-conflict societies like Somalia (Tolbert & Andrew Solomon, 2006), as various authors considered that the rule of law is of more significant for nation building, they argue that a new state demands organizations of “the rule of law” more than other governmental organizations such as parliament (Waldron, 2020). The United Nations also acknowledged that the rule of law is very essential not only resolving intrastate issues but also the international peace and security as well as political stability in order to the state to attain its aimed economic and social development (United Nations), and to maintain the rule of law there must be an independent judiciary and strong constitutional provisions that strengthen the applicability of the concept.

In the content of the Provisional Constitution, the term “rule of law” was stated only for three times, although that does not mean in anyway that the constitution is weakening applicability of the rule of law, as Article 3 of the Constitution, Paragraph (4) acknowledges that there are seven priorities that the Constitution aims to promote including the rule of law, human rights, general standards of international law, justice, participatory and inclusive government, separation of powers, and independent judiciary. It aims to attain these priorities in order to make sure that there is accountability, productivity and openness to the interest of citizens. In this Paragraph, the Constitution declared that the most important objective for preserving and promotion of the rule of law is to attain the highest level of transparency and accountability which will be of more beneficial to the people. As the adherence to the rule of law entails that the governments held responsible by law and the people are equal before the law (Cordenillo & Sample, 2014). However, the rule of law is not only the responsibility of the government but as well its the responsibility of the citizens. To ensure that, the Constitution in its Article 42 Paragraph (2)(e) provided that, it is one of the broad duties of every citizen in the promotion of the rule of law as well as the Constitution demands the security forces to respect the rule of law principle as it states in Article 127 (1)(b).

It seems that the Constitution has arranged when stating the term “the rule of law” as mentioned hereinbefore. First, it made the rule of law one of the basic objectives that the Constitution tries to attain, this gives the preservation of the rule of law concept more important as it is the ultimate destination that the Constitution is heading to. Second, it encouraged the citizens to promote the rule of law as it imposed as one of the basic duties of citizens to preserve it, and this gives that the people have the authority to use any lawful means to safeguard it by making the ruler accountable for preserving it. Third, in order to prevent the ruler to take advantage of the security forces to repress the people using the authority vested to him for guiding and ordering of security forces by the Constitution, it imposed towards security forces to respect the rule of law. This gives the security forces to negate any unlawful actions/orders that may damage the preservation of the rule of law which in turn protects the existence of the rule of law in the country.

#### *4.3. Judicial Supremacy*

In the previous subsections, I have presented that in order to preserve the rule of law there should be judicial independence specifically decisional independence of the judiciary is necessary for that. However, to ensure that the rule of law will not be tarnished at any particular point of time in its life by a political force judicial independence needs to work alongside judicial supremacy (Boies, 2006). Judicial supremacy describes the trustworthiness for clarification of constitutional provisions by judges on the other government organs and of the judicial decisions on the continuing legitimacy of confronted laws, the behavior of courts and judges in performing judicial review, and the political authority of judiciary organ to the other government organs relating constitutional matters (Gardbaum, 2018). Although, some authors criticize the concept of judicial supremacy still we cannot close our eyes the importance that it has, according to its fairness from any political interest, as long as it is an independent organ from other political organs of the state, which is of more valuable to normal citizens, outside politicians (oppositions) and other pressure groups who need to rectify the incorrect acts taken by the government of the day.

The Provisional Constitution of Somalia in its Article 4 states the supremacy of the constitution, of course after the Shariah since the country is a Muslim country as prescribed in paragraph (1) of the same Article. The Paragraph (2) of that Article, affirms that courts have the authority and supremacy to overthrow such Acts and activities that cannot go along with the Constitution, especially, Constitutional Court has such exclusive jurisdiction. This offers the judiciary the supreme authority to matters relating to the constitution, which may encompass interpretative, decisional, attitudinal and political supremacy since the supremacy of the constitution

is subject to the supremacy of the judiciary organ. From that direction, we can understand that the supremacy of the judiciary depends on the existence of Constitutional Court to have such jurisdiction to decide matters which are constitutionally fit or not, but does it exist?

#### *4.4. Separation of Powers:*

Numerous authors discussed inversely to the concept of separation of powers, some of them claimed that its attached to the constitutional foundations and any constitution should adhere to it. Others have seen that its only restricted to such constitutions designed for presidential system states (Barber, 2012), it is one of the essential pillars upholding the theoretical design of moderate state. The separation of powers is a notion that gradually emerged out of after periods of diplomatic and theoretical evolutions. It indicates that there is three types of fundamental categorization of governmental organizations which are executive, legislative and judiciary, and also there is three basic things that the concept requires in order to realize the actual separation which are: (a) same person is not allowed to work more than one branch of the government; (b) one governmental branch should not make an intervention to an other branch of the government; and (c) one governmental branch should not exercise the responsibilities allocated to other governmental branches (Bhadu, 2021).

Some authors have seen that the principle of separation of powers is not just a one concept but inversely it's a combination of four different concepts including: a tripartite division of governmental organizations, dividing governmental tasks in between the governmental organizations, a scheme of checks and balance, and regular association among the three governmental organs (Maldonado, 2018). Briefly, the principle describes that each of the three governmental organs shall have the right to decide on internal matters in its jurisdictional authority while each organ has the ability to pressure the other two organs from deviating its borders or jurisdiction, and here is where the phrase "checks and balance" came which means that each governmental organ monitors the other two organs to ensure that it does not deviate from its constitutionally assigned functions (Abu-Soai, 2015).

In the content of the Provisional Constitution, the term separation of powers appears only once. However, it cannot be said that the Constitution defaulted its importance since the whole context of the Constitution can be unambiguously understood that it had emboldened the separation of governmental powers. In terms of state organs' division, Article 3 Paragraph (5) clearly states that there is three branches of government while in terms of organizational functions, the Constitution talks each organ (legislative, executive, and judiciary) of the state organs' functions in a separate chapter. Though, the Constitution had discussed deeply and clearly the separation of powers, especially functional divisions, but there will be a question mark on the root principle of the constitution, which is, whether the constitution protected as it deserved or not? Does the constitution divided functions of different state organs, which the concept of separation of powers cannot stand without it, or not?

#### *4.5. Good Governance:*

Before I discuss good governance, I would like to display a short understanding of the overall concept of governance. Mostly the term "Governance" is a term linked to the national administration system (Weiss, 2000), its generally described as the act of managing the connection between those who rule and their subjects (Pujiastuti, Triwati, & Septiandani, 2021).

Good governance is an institutional procedures by which a governmental powers within a state is managed including: (a) the procedure by which authorities are chosen, held accountable, scrutinized and subrogated; (b) the ability of authorities to allocate resources effectively, and to create, implement and strength comprehensive strategies and rules; and (c) the veneration for the organizations that administer monetary and societal communications among them (Shefiu, Peluola, & Adebayo, 2019), this means that the good governance concept indicates an effective and conceivable public sector including involvement and the rule of law, thus, requires the accountability and openness to be strengthened, and also actual participation being promoted (Swedish International Development Cooperation Agency (Sida), 2002). According to the United Nations, "good governance is that governance that has eight key features including participatory, compromise oriented, accountable, transparent, responsive, effective and efficient, reasonable and inclusive, and observes the rule of law principles. It ensures that the corruption is reduced, the opinions of minorities are calculated, and that the sounds of the most susceptible in people are heard in policymaking while responding to the current and potential desires of the people (United Nations, 2018)," but, it is neither thinkable nor achievable unless there is sufficient social progress that exist since it is an outcome of the relationship between the state and the society which means

that it relies on the quality and the existence of Civil Society (Schattkowsky, 2014). Somalia seems that it lacks most, if not all, of these eight features which are the basis of good governance for more than three decades.

## **5. Institutional Framework of Somali Judiciary:**

In this section, I will try to sum up the building up structure of judicial system in Somalia. Generally, before 2004 the governmental system of Somalia was based on unitary system of governance, so that all governing powers was residing within the central government, the same was applying to the courts and judicial system. After 2004, the country took a new path which is totally different from the usual one. The system of governance was provisionally agreed to be federal system, the future of which is not yet clear. In 2012, a provisional constitution was drafted by constituent assembly for constitutional issues, that constitution was a part for the implementation of federal system in the country. This changed the building up structure of all governmental institutions including judicial institutions i.e., courts.

### *5.1. Current Structure of Courts:*

Though the system of governance was altered but the previous structure of courts still operates in Somalia. There are three different levels of courts, the court at each level has the authority to handle certain cases, which is defined as the jurisdiction of the court. Currently, there are three main categories of courts that exist in Somalia which are: (a) first instance courts including districts and regional courts; (b) second instance courts including all regional appellate courts; and (c) third instance court which is the high court of the nation.

The aforementioned mode of division gives each hierarchy of the courts certain and specific jurisdictions that encompass both functional and territorial jurisdiction. According to the territorial jurisdiction each court has the jurisdiction over specific borderline whether that borderline limited to district, region or national level while the functional jurisdiction connotes that each court has both general and specific jurisdiction over the cases brought before that specific court. It means that each court has some original jurisdictions over specific cases and at the same time it has exclusive jurisdiction over other cases. For example, each district court has jurisdiction over the borderline of the district it locates, it also has original jurisdiction that consists of civil and criminal jurisdictions. In terms of civil jurisdiction, district courts have the competence of the cases which its value does not exceed 3,000 sh. So., excluding over the cases related to the employment issues which lie under the exclusive jurisdiction of regional courts. In terms of criminal jurisdiction, it has competence over the cases which its punishment does not exceed 3 years of imprisonment and cases which its monetary fine does not exceed 3,000 sh. So., either each or both. On the other hand, it has exclusive jurisdiction over the cases related to the family and probate issues. This means that the case in which the Court has exclusive jurisdiction on it no other court, even if it is superior, has the competence to judge such case, and if such case brought before any other court other than the court having exclusive jurisdiction over it and reach a conclusion, such judgment shall be null and void.

### *5.2. Potential Structure of Courts:*

The potential courts structure to be achieved was stated in the Provisional Constitution of the Republic, which is basically consist of three categories but more broadly than the previous structure that currently yet operates. These three categories are: (a) Federal Member State level courts; (b) Federal Government level courts; and (c) the Constitutional Court which will be the supreme court of the nation. In this categorization, the Constitution states that the highest court at Federal Government level will be the Federal High Court, while the highest court at Federal Member State level will be the Federal Member State High Court.

In this mode of division, the first category which is the Federal Member State level encompasses the first/second instance courts (district and regional courts) of the previous division whereas the second category, Federal Government level, encompasses the third instance court of the previous division which is the National High Court. While it gives special status to the Constitutional Court as the supreme court of land in terms of constitutional interpretations, invalidation of unlawful administrative actions, review challenged legislations and resolve any political disputes that arise out among different governmental levels, in order to prevent any political instability in the country.

## **6. The Role of Independent Judiciary in Political Stability:**

Political stability is of more crucial to any country in order every organ of the government do its functions smoothly and without difficulties. In this section, I will try to elaborate the political instability that exist in Somalia and the vacuumed role by Somali judiciary to participate the stabilizing of politics and reducing political crises.

### *6.1. Political Instability in Somalia:*

Political instability has been defined as a situation in which political activities of organizational structure of authority collapse, and the anticipated compliance to political authority is substituted by political violence (Morrison & Stevenson, 1971). It is the outcome of a combination of social, cultural, political and economic aspects. The most essential device that lead to the political instability is when the society members feel that they are economically deprived as a result of insufficiency of physical and human resources accessible to them or unfair allocation of resources across social groups (Murad & Alshyab, 2019; Baqdi, 2012), but not all the times. It can sometimes occur due to the bad leadership, autocracy, abuse of governmental powers, nepotism, and mismanagement of major political cases that will cause political instability. During the past two decades, the existence of political instability in developing countries has been two to six times higher than in comparison to the industrialized countries (Ouédraogo, Ouédraogo, & Lompo, 2020), it has been considered as a part of a change that occur on the executive organ of the State either by means of constitutional or unconstitutional (Alesina, Özler, Roubini, & Swagel, 1996; Alesina & Perotti, 1996). Generally, in African countries political instability is an essential part of governmental life and its actions such as violence, civil war, strike, coup d'état and the collapse of government can be seen in a daily basis (Ibrahim Jam Jalloh, Djatmika, & Putra, 2017). Just in 2021, there were four successful military coup d'états in African continent, such frequent happening of political instability is mostly accompanied with a huge corruption that innate undergrowth and poverty (Adefeso, 2018).

Somalia was suffering institutional incapacity and lack of functioning government for the past three decades, in addition to massive political instability activities and prolonged civil war. According to the World Governance Indicator published by the World Bank in 2020, Somalia occupied 2<sup>nd</sup> percentile of the [political stability and absence of violence/terrorism indicator] where zero (0) corresponds to the lowest and hundred (100) to the highest rank. This shows that the rate of political instability in Somalia is too high by observing the current political situation that exist in the country it will be clear that even it is lower than that percentile if we look deeply the surrounding politics. Currently, the country's elections had been delayed for almost one year due to political disagreements and constitutional disobedience which had not yet got the respect it deserves. A clash occurred inside the executive organ of the government caused the political divisive of the Prime-minster and the outgoing President (it seems that it has encroached the political views difference to constitutional crisis), and since such case had not been recorded from the country as of its independent in 1960, it was the judiciary to take its role to interpret the Articles of the Constitution that both offices use to legalize their actions but it seems that the Judiciary organ had been frozen from the part of the executive organ, in one way or another, and that it had accepted that undermining.

### *6.2. Judiciary and Politics in Somalia:*

Since there is no actual separation of powers in between the governmental organs in Somalia, it is normal that the judiciary mix itself into the political waves without respecting their status as a separate and independent organ from both the legislative as well as the executive specially the later one that seems or see itself that it is the controller of the other two organs. There were many constitutional irregularities occurred in the past few years related to the appointment and dismissal of judiciary personals i.e., judges, that have caused the current actions of the judiciary organ. For example, in May 2018, the President discharged the Chief Justice of the Supreme Court from the office that has created a huge stir upon the validity of that action. The dismissed Chief Justice strained to oppose it and to explain that the action of the president was illegal according to the laws of the country while the parliament, who is the actual organ having the authority to make executive officials accountable for their actions, took a hushed position. After a few days, the President appointed a new Chief Justice to the Supreme Court and again this appointment created a new tension in both the field of legality and professionalism because the newly appointed Chief Justice was a person who did not work as judge before.

Though the tenure of judges is established in the Constitution and other laws of the country, aforesaid steps display that the judiciary organ is under the control of the executive organ specially the office of the President and that there is no need for following the procedural guidelines and regulations for terminating judges and appointing new judges as well, but it only need the will of the President which is totally against the Constitution and other laws of the country. This puts the judiciary organ of the State to blend itself to the existing political predicaments instead of resolving it in legal means. However, this is not the only ideal but in the past five years there were many political and legal crisis that had been made by the executive branch of the government and judiciary who is the guardian of the Constitution and the other laws of the land lost its reputation

## **7. Challenges to Judicial Independence in Somalia:**

In this section, I will try to expound the challenges facing by the Somali judiciary organ in the performance of its functions perfectly, by illustration these challenges we will find a solution for many questions referred into the preceding sections, these challenges include:

### *7.1. Lack of Separation of Authorities:*

Separation of governmental powers into three equal State organs gives the system of governance to be balanced and that each of the organs do its functions within the borders and the scope provided under the Constitution of the country. It means that each organ of the government performs only its particular purposes and the persons working inside one organ should not concurrently be employed in another organ. The significant purpose behind the separation of powers is to prevent any person or cluster from gathering excessive control and then reigning autocratically (Klassen, 2011).

The absence of this fundamental principle in governmental system does not only challenges the smooth-running of State organs function but it also puts all system at stake, the proof of this dialectic can be seen on the governance situations that exist in fragile States as of Somalia. The most affected organ upon such situation in Somalia is the judiciary organ of the State since the judiciary system of the country is weaker than the other two organs (executive and legislative) for many reasons. First, judges are appointed by the executive organ (the President) which means that in case any judge becomes at odds or issue a dissenting judgment against the will of the president or executive as a whole, the judge will be disqualified from the position. Second, shortage of supplementary regulations supporting and strengthening the independence of judiciary as a distinct organ, including the establishment of the Constitutional Court, and then the establishment of the Judicial Service Commission (JSC); however, there is a little confusion of which of the bodies will be established firstly which leads constitutional questions that require inclusive interpretation led by the currently functioning Supreme Court, though it seems that it cannot take that burden at least under the outgoing regime. Finally, misuse of constitutional articles as well as using the regulations set out by the former military regime supporting the autocracy and the rule of one person sometimes give the executive the power to infringe, directly and without feeling any sense of responsibility, the specific duties of the judiciary.

### *7.2. Contempt and the Violation of the Constitution:*

The Constitution as the biggest written legal document (after the Shariah that the Constitution cannot contradict with it in any means) delineates that there are three separate branches of government each having certain functions while the other branches cannot make any infringement to those certain duties assigned to that specific branch. It is not just recognizing the constraints of control and authority of the three branches but it guarantees at the same time that each organ of the government adheres the principles stipulated in the Constitution, and the main destination intended to reach is the evasion of conflicts as well as protection the constitutional supremacy. Disrespecting and violating the Constitution became a regular habit in the political arena of Somalia, the courts which one of their main functions is to safeguard the supremacy of the constitution became a puppet in the hands of the executive organ, resulting in that the politicians find the sufficient courage to do activities prohibited by law without giving any consideration to courts having the judicial authority and authority to interpret the Constitution and other laws of the State.

### *7.3. Corruption and Bias:*

Corruption is the most attached term to the developing countries, specifically those which are politically and administratively fragile. According to World Bank, corruption is defined as the exploitation and misuse of governmental authority for personal benefits (Tanzi, 1998). In this context, corruption is something that wider than to be referred as single activity, on contrary it is a collection of activities that each of them damage separately the functional existence of the judiciary institutions such as bribery, unneutrality and bias. Judicial neutrality makes the judiciary system of any country to function properly, though Somalia lacks such judicial system. Judicial neutrality is something that cannot stand alone without judicial independence, if the judiciary system is not independent and free from the infringements of the legislative and executive organs it will be impossible to get neutral judiciary, resulting in the widespread of corruption and bias inside the judiciary organ and non-reliance of the citizens to the system of national justice as the case in Somalia.

### *7.4. Unfair and Corrupt Judges:*

Un-procedural putting of judges in the system of judiciary leads many times that such judges become corrupt as they come inside the system through erroneous procedures and without respect of the guiding principles set out in legal documents of the country. Absence of systematic procedure and relinquishing from obedience to the guidelines, added into an increased nepotism, results in negative impact to Somali legal system. When judges had not been appointed in a purely legitimate manner, then there is no doubt that such judges will carry out heinous acts beyond the borders of their functions written in legal texts, which led to the barbarism of the judicial system of the country. Therefore, the appointment of judges should in a legal and correct manner because when the judges knew the illegal procedure that they come into the system, neither they respect the laws and regulations or they will care about the rights of the citizens. That is the main reason that citizens run away from proceeding their cases before the courts in Somalia and this puts independence of the judiciary at stake.

#### *7.5. Lack of Legal Education:*

Provided the judges and other judicial workers enter into the judiciary system in twisted and defective manners such as nepotism, it is known that it will result unqualified persons for the position of justice system. Though, the law provides that the appointment of the judiciary to be done on the basis of public competitive examination and such examination be open to citizens who have a degree in legal subjects, in recent years there was no need of such procedure for two reasons: (a) shortage of such people who have studied law and have the knowledge and the capacity needed willing to join the judiciary system; and (b) Somali political elites who are not giving the judiciary system the care it deserves as some scholars argue that if they put those people who have the capacity and knowledge needed in the field of judiciary they will put their dirty politics future in an obscurity and the system of checks and balance will work perfectly which they do not want.

#### *7.6. Organizational Disempowerment to the Judiciary:*

In order to get independent judiciary performing its functions neutrally without bias and corruption it should be fully empowered the judiciary organ. According to many scholars, judicial empowerment refers to the widening of the courts' authority as a State organ in relation to other organs of the same administrative level, either in its quasi-legislative task or its power to resolve political matters through court judgment. In this context, judicial empowerment can be seen two different arrangements. First, it signifies the increase of the scope of courts' jurisdiction and action at the price of politics. Second, the prevalence of judicial decision-making procedures beyond the judicial sphere. It means that the judicial empowerment incorporates the expansion of the courts' impact into the political scope through deciding major political questions by the judiciary (Meng, 2021; Ahl, 2019; Vallinder, 1994), as it includes not only the formulation and direct application of rules by courts, but also decisions by other political performers in the context of judicial processes (Ginsburg, 2008). In order to reach such judicial empowerments, there should be strong courts having the competence to deal with big political related cases including monitoring executive organ duties, taking decisions over electoral issues and formulating nation building processes (Hirschl, 2008).

Judicial disempowerment would be articulated in weakening the judicial institutions' powers *vis-à-vis* the other State constitutional actors at the same hierarchy level with the judiciary organ (Meng, 2021), while such continues interferences to the judiciary organ functions, like what currently goes in Somalia, would hinder the work of the judiciary as a separate and independent organ. Thus, the infringements in the justice system and the seizure of the courts functions usually practiced by prosecuting attorneys and investigating adjudicators results an increased disempowerment of the judiciary (Cardinal, 2021).

### **8. Conclusion:**

In this study, the researcher focused the absence of independent judiciary and its relationship into the repeatedly political crisis that exist in Somalia regarding the political and institutional framework of the State organs and their functionality. Though the Constitution clearly separates the powers of the three government organs and it gives the courts who are representing the judiciary organ the power to interpret and implement rules and regulations, resolve major political questions, be the guardian of the Constitution as well as to be an instrument to work on the principle of checks and balances to protect the application of the rule of law but, unfortunately, there is no actual mentionable separation of powers that exist in Somalia. Therefore, after examining the current issues the research concluded that the inactive role of the judiciary in the midst of political and constitutional crisis in the country caused by major factors which are:

- 1) The lack of credibility of the judiciary and its bias towards the ruling individual(s) rather than applying rules and regulation in a fair and neutral manner. This had led citizens to believe that no one have the ability to oppose wrong activities done by the politicians leading the government of the day since the judiciary organ, assumed to be an independent organ from the executive organ, is working under the under executive organ as an inferior organ while the executive seems as superior than the judiciary in all matters.
- 2) Lack of sufficient knowledge, individual capacity and spirit of justice by the members of judicial system. This factor is the major factor that caused the lack of credibility of the judiciary system of the country since the individuals working in the field of justice including prosecutors, judges, court registrars and other court officers enter into the system in a corruption and un-procedural manners without checking their knowledge, capacity as well as their essence for the application of the written legal documents.
- 3) Continues and repeatedly infringements on the part of the executive organ to the judiciary including pressuring, intimidating and undermining of the members of justice system by threatening to them on the removal of their positions that leads the judiciary organ to function improperly manner.

Based on that, the researcher advanced a number of recommendations to be enhanced the judicial independence in Somalia in order the judiciary organ function properly and to take its duty on resolving recurring political and constitutional crisis including:

- 1) Application of the fixed period of the judicial workers, this gives the judicial workers job security and that they cannot be threatened to do illegal acts in order to preserve their positions, it can be attained to create JSC. Generally, executive organ takes an opportunity to control the judiciary organ through misinterpretation of constitutional Articles as well as the other laws that relate to appointment and removal of the judiciary organ's members and to prevent such infringements from the executive organ it should be established strong procedural ways for the appointment and removal of judiciary members with their secure tenure of office.
- 2) Establishing minimum qualifications and competences for such persons searching to be part of justice system. This will stretch the judicial system to achieve the qualities it demands as long the individuals who are working inside the system had been examined and ensured that they are eligible to such duties ad responsibilities they will do when they enter the justice system of the country. It will also provide the avoidance of the nepotism which is the main diminisher of the justice system.
- 3) Providing judges certain civil immunities and privileges. Though the Constitution and the other laws of the country establish immunities to the judges but it is also needed to be launched means to effectively implement for such immunities and privileges. In addition, it should not be limited only to the judges but it should also go through to the other members of the judicial system.
- 4) Assuming judicial positions to persons who have the capacity to accommodate and absorb the ongoing political and legal crisis that need legal solutions, not political, and have the capabilities to understand the suitable legal solutions to resolve such crisis, while overcoming the judicial silence of the great tensions exist in the country which had obstructed the judicial functions and putted in a pitfall condition.

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