

Examining the Separation of Powers: The Three Organs of Government in Somalia: The Case Study Independent Judiciary

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Abstract: *This study investigates the principle of separation of powers within the framework of Somalia's governance, focusing on the independent judiciary as a case study. The article searches the relationship between the executive, legislative, and judicial branches, examining how this framework is intended to promote accountability and defend the rule of law. The research points out the historical challenges faced by Somalia, including protracted conflicts and political instability, which have significantly impacted the effectiveness of its judicial system. From side to side a qualitative study of legal reforms, institutional structures, and case law, this study assesses the current state of judicial independence in Somalia as case study. The article aims to identify main obstacles and propose recommendations for firming the judiciary as a vibrant organ of government, thereby contributing to enhanced governance and the protection of human rights in the country.*

Keywords: Separation of Powers, three Organs of Government, Executive Branch, Legislative Branch, Judicial Branch, Independent Judiciary case study

1. Introduction

The introduction searches the initial concept of the separation of powers, which is essential for a functioning democracy and governance in Somalia. The article outlines the three primary organs of government: the executive, legislative, and judicial branches, underlining their distinct roles and interdependencies. Moreover, in the context of Somalia, a nation facing with political instability and a difficult legal history, the study focuses on the independent judiciary as a critical component of governance. The introduction points out the challenges faced by the judiciary in maintaining independence among political pressures and the effects for rule of law and human rights. This article study aims to provide perceptions into the effectiveness of the separation of powers in Somalia and its influence on independent processes.

1.1 Background of the article

The background of the examination of the separation of powers in Somalia, particularly focusing on the independent judiciary, is crucial for understanding the governance structure in the country. The separation of powers is a fundamental principle in democratic governance, designed to prevent the concentration of power and to ensure that the three branches of government—executive, legislative, and judicial function independently and effectively (Menkhaus, 2014). Moreover, in Somalia, the historical context of governance has been shaped by prolonged periods of conflict, instability, and the absence of a strong central authority. Additionally civil war that erupted in the early 1990s led to the collapse of the state, resulting in fragmented governance and the emergence of various factions. This turmoil has significantly impacted the establishment and functioning of the judiciary, which is essential for upholding the rule of law and protecting human rights (Somalia Provisional Constitution, 2012). The independent judiciary in Somalia faces numerous challenges,

including political interference, lack of resources, and inadequate legal frameworks (UN Development Programme, 2017). Equally important, these issues block the judiciary's ability to operate effectively and independently. Despite these obstacles, there have been efforts to reform the judicial system and enhance its independence. Such reforms are vital for restoring public trust in the legal system and ensuring that justice is accessible to all citizens (World Bank, 2020). Furthermore, understanding the activities of the separation of powers in Somalia, particularly concerning the judiciary, is essential for assessing the country's progress towards democratic governance and the rule of law. Equally important, the judiciary's independence is crucial for maintaining checks and balances within the government, ensuring that no branch exceeds its authority (Baker, 2019). Moreover, this consideration marks the importance of institutional integrity and the need for continued support in building a robust judicial system that can operate independently of political pressures (Elmi, 2021). The Author added that, the separation of powers in Somalia, with a focus on the independent judiciary, is a critical aspect of the country's governance more in focusing the challenges faced by the judiciary and reinforcing its independence are essential steps towards achieving a stable and democratic Somalia.

2. Literature Review

The literature on the separation of powers in Somalia, particularly regarding the independent judiciary, points out a variety of challenges and developments. Scholars emphasize the historical context of Somalia's governance, marked by decades of conflict that have undermined state institutions and the rule of law (Menkhaus, 2014). As well, on various studies point to the judiciary's critical role in maintaining checks and balances within the government, yet they also identify significant obstacles, such as political interference, insufficient resources, and inadequate legal frameworks (International Crisis Group, 2016; UN Development

Programme, 2017). Moreover, recent reforms aimed at improving judicial independence are discussed, with researchers noting their importance for restoring public trust in the legal system (World Bank, 2020). Also, the literature underlines the necessity of international support for building a strong judicial framework that has to function independently and effectively (Baker, 2019; Elmi, 2021). The literature on the separation of powers in Somalia, particularly regarding the independent judiciary, highlights a range of challenges and developments. Scholars emphasize the historical context of Somalia's governance, marked by decades of conflict that have undermined state institutions and the rule of law (Menkhaus, 2014).

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At large, the author added that the review points the relationship between historical challenges and present efforts to reinforce the judiciary as a fundamental aspect of Somalia's path toward democratic governance. At outsized, the review opinions the interaction between historical challenges and existing efforts to strengthen the judiciary as a fundamental aspect of Somalia's path toward democratic governance.

2.1 Separation of Powers

Numerous authors discussed inversely to the concept of separation of powers, some of them claimed that it 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. Additionally, 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 other branch of the government; and (c) one governmental branch should not exercise the responsibilities allocated to other governmental branches (Bhadu, 2021). Moreover, 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).

For a short time, 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 are 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? Do the constitution divided functions of different state organs, which the concept of separation of powers cannot stand without it, or not?

2.2 Three Organs of Government

The three organs of government—**Legislature**, **Executive**, and **Judiciary**—each play a distinct role in governing a state, with the principle of **separation of powers** ensuring their independence and balance. The Legislature is responsible for making laws, often through bodies like Parliament or Congress, while the Executive, headed by figures such as the President or Prime Minister, implements and enforces these laws through government departments and policies. The Judiciary, comprising courts and judges, interprets and applies laws, resolves disputes, and ensures compliance with the constitution. The separation of powers prevents any one branch from accumulating excessive authority, maintaining checks and balances essential for accountability. For instance, the Judiciary can review the constitutionality of laws, the Executive can veto legislation, and the Legislature can impeach officials in the other branches. This division safeguards democracy, ensures fairness, and upholds the rule of law.

2.3 Independent Judiciary

There are three different government 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 autocratic. In addition to the 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 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 the 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?

3. Recommendations

- 1) Judicial Reforms: Complete judicial reforms should be put into place to create more transparent legal frameworks that support judicial independence and accountability. Training programs for judges and legal professionals should also be implemented to improve their ability and integrity.
- 2) Allocation of Resources: To guarantee the judiciary's ability to function efficiently, increase financing and resources for it. This entails enhancing support services, legal resource accessibility, and infrastructure.
- 3) Political Neutrality: To put policies in place to protect the courts from political meddling. The independence of the judiciary to be well-maintained by putting in place explicit rules and supervision procedures.
- 4) Public Awareness: Encourage public awareness initiatives that highlight the value of the rule of law and the function of the court. Increased public trust in the legal system can be achieved through education.

4. Future Prospect

- 1) Successful judicial reforms will help to improve integrity and public trust.
- 2) Continued stabilization may lead to a more effective judiciary.
- 3) Strengthening the judiciary is essential for improved governance and accountability.
- 4) Increased public awareness of legal rights will empower citizens.
- 5) International cooperation may provide active resources and expertise.
- 6) A strong judiciary could serve as a limiting against corruption and abuse of power.
- 7) These developments are crucial for Somalia's long-term peace and development.

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