



Impediments To Establishing Somalia's Judicial Service Commission: Challenges & Future Prospects

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ABSTRACT

The purpose of this study is to analyze the application of legal philosophy values in the formation of regional regulations in Indonesia, as well as to examine the suitability between legal philosophy values and regional regulations that have been formed. This study uses a descriptive analytical research type with a normative legal approach method. Research data were obtained from primary, secondary and primary legal materials. Data collection techniques were carried out qualitatively. The results of the study indicate that the application of legal philosophy values in the formation of regional regulations in Indonesia is still not optimal. This is due to several factors, such as a lack of understanding of the values of legal philosophy among regional regulation makers, minimal community participation in the process of forming regional regulations, and weak law enforcement. This study has limitations in its focus on the application of legal philosophy values and a lack of analysis of the impact of regional regulations that do not follow these values.

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1.0 Introduction

The Judicial Service Commission (JSC) is the principal constitutional body mandated to promote and safeguard the independence and accountability of the judiciary, while ensuring the efficient, effective, and transparent administration of justice. Its mandate encompasses institutional and individual independence in judicial decision making a function essential to preserving both the integrity and public legitimacy of the judiciary. Judicial councils emerged from the continental law tradition. In France, the Conseil supérieur de la magistrature was constitutionally established under the Fourth Republic in 1946; it is chaired by the President of the Republic with the Minister of Justice as vice-president and includes members elected by the National Assembly and peers, who play central roles in judge appointments, discipline, and court administration¹. Italy followed a similar path with its Consiglio Superiore della Magistratura, supporting recruitment and discipline in line with the French model². This Southern European model later influenced judicial council reforms across Latin America and Africa. Venezuela, for example, constitutionally enacted a judicial council in 1961 (though operational in 1969) to oversee

¹ Loi du 30 août 1883 portant réforme du Conseil supérieur de la magistrature (France); Constitution de la Quatrième République, 27 octobre 1946 (France).

² Conseil supérieur de la magistrature (France), Southern European model and powers encl.eu.

judicial appointments, while African states began establishing similar institutions during the decolonization wave of the 1950s³. In Somalia, the roots of the current Higher Judicial Council (HJC) trace back to the colonial period under Law No. 5 (1956), which formally created the commission. The 1962 Judicial Organization Law then entrenched the HJC's authority over recruitment, promotion, demotion, and budgetary matters across the judicial system⁴.

Post-civil war, the 2012 Provisional Federal Constitution and the 2014 law establishing the JSC reaffirmed its role. However, full operationalization remains dependent on constitutional finalization and high-level political consensus. This research examines the impediments to establishing a functional JSC in Somalia, reflecting the critical need for a qualified, independent judiciary. Without a strong Judicial Service Commission, Somalia's judiciary remains unprotected like a house without a roof vulnerable to outside pressures and unable to uphold justice.

1.1 Problem Statement

The Judicial Service Commission (JSC) holds the constitutional mandate to regulate all facets of the judicial branch, including the appointment, promotion, discipline, inspection, accountability, and overall enhancement of the judiciary. Its effective operation is essential to maintaining judicial independence and strengthening public trust in the justice system. An independent and efficient judiciary is fundamental for demonstrating accountability and upholding the rule of law, which are vital responsibilities owed to the Somali population. The absence of a functional judicial service commission leaves the judiciary vulnerable to external interference, lacking institutional safeguards to protect its independence and integrity. Consequently, the judiciary is often perceived as the weakest arm of government compared to the executive and legislature, undermining public confidence due to the judiciary's inconsistent and inequitable service delivery. Additionally, citizens face difficulties in lodging complaints or seeking redress, as no mandated body exists to address grievances, further eroding trust in the system.

If established efficiently and in accordance with the law, the JSC would embody the principle of separation of powers by ensuring that the judiciary remains insulated from political influence. This independence would position the judiciary as a robust and impartial institution, capable of providing legal solutions to Somalia's ongoing political and social challenges. This research is undertaken in response to the critical and widespread problem of an underdeveloped judiciary lacking institutional independence. The study aims to produce actionable recommendations that will catalyse timely and transparent establishment of the JSC, thereby fostering a qualified judiciary capable of upholding justice without obstruction.

1.2 Significance of the Study

This research addresses the critical barriers impeding the establishment of a Judicial Service Commission (JSC) in Somalia and offers valuable insights for the institutions charged with its formation. The findings and recommendations presented herein are intended to directly benefit key stakeholders, including government bodies, judicial authorities, and the President's legal advisors, who play pivotal roles in advancing judicial reforms. The effective establishment of the JSC requires committed governmental leadership to assume responsibility and exert necessary political will to resolve longstanding institutional challenges. This study emphasizes the importance of inclusive

³ Comparative development of judicial councils (France 1946; Italy) and influence in Latin America and Africa tlq.ilaw.cas.czenci.eu.

⁴ Somalia, Law on the Organization of the Judiciary (1962), articles establishing the HJC's roles in recruitment, promotion, demotion, and budget administration.

dialogue with all relevant actors to formulate sustainable solutions that overcome existing obstacles to the JSC's operationalization.

Recognizing the fundamental role of the judiciary in upholding justice and the rule of law, this research contributes to the broader efforts to strengthen judicial independence and accountability in Somalia. Ultimately, the study aims to support the development of a transparent, efficient, and independent judicial system that commands public trust and enhances the administration of justice in the country.

1.3 Purpose of the Study

The primary objective of this qualitative study is threefold.

First, it seeks to examine and critically assess the historical evolution and institutional hierarchy of judicial service commissions in Somalia, tracing their development from their inception to the present constitutional framework. Second, it aims to identify and analyse the principal legal, political, and structural impediments that have hindered the effective establishment and functioning of a Judicial Service Commission (JSC) in Somalia. Third, it endeavours to propose an institutional design for a JSC that is both constitutionally sound and contextually adapted to Somalia's socio-political realities, thereby contributing to the broader objectives of judicial independence, accountability, and sustainable justice sector reform. In pursuing these aims, the study aspires to generate findings that are of practical relevance to policymakers, judicial actors, and development partners engaged in justice sector reform, while also contributing to the academic discourse on judicial governance in post-conflict and transitional states.

1.4 Methodology

This study adopts a qualitative methodology that combines documentary analysis with semi-structured interviews. The documentary review examines core constitutional and legal instruments, including the Transitional Constitution, the Jawhar Agreement 2018, agreement of federalization of the judiciary 2022, the 2000 Transitional National Charter, the 2004 Transitional Federal Charter, the reports and recommendations of the 2016 and 2020 Constitutional Review Committees, the Judicial Service Commission Establishment Act of 2014, as well as relevant judicial organization laws and policy documents. The analysis also incorporates secondary literature, such as scholarly articles, policy reports, and monographs addressing judicial institutions and the development of judicial service commissions. To complement this review, the research integrates empirical findings from interviews with key informants who hold direct experience in Somalia's judicial and constitutional reform processes. These perspectives highlight the practical and political challenges shaping the establishment of the Judicial Service Council. The study also places Somalia's experience in the context of comparative research on judicial governance, contributing to wider debates on judicial independence, accountability, and the design of judicial institutions.

2.0 Background of the Judiciary Commissions

The Judicial Service Commission (JSC) is the principal constitutional body mandated to promote and safeguard the independence and accountability of the judiciary, while ensuring the efficient, effective, and transparent administration of justice⁵. In comparative perspective, the judicial council model is often associated with civil law traditions, yet it shares functional similarities with institutions in common law jurisdictions, such as the United States Federal Judicial Conference and the judicial service boards or commissions found in several Commonwealth nations⁶.

The modern concept of a judicial council originated in Europe. France was the first state to establish such a body in 1946, creating the Conseil Supérieur de la Magistrature to oversee the appointment and discipline of judges and magistrates. Italy followed in 1958 with the creation of the Consiglio Superiore

⁵ Leo K. Kemboi, *The Four Governance Issues for Effective Judicial Service Commission and Judiciary* (26 January 2022), SSRN, online: SSRN <https://ssrn.com/abstract=4018211>

⁶ Hammergren, Linn. *Do Judicial Councils Further Judicial Reform? Lessons from Latin America*. Washington, DC: World Bank, 2002.

della Magistratura⁷. This Franco Italian model has since been exported widely, particularly to Latin America and other developing countries. International financial institutions, including the World Bank, have frequently incorporated the establishment of judicial councils into their broader judicial reform and rule of law programming⁸. In Latin America, the first judicial council consciously modelled on European practice was constitutionally created in Venezuela in 1961, although it was not formally operational until 1969. Its primary mandate was the management of judicial appointments, thereby institutionalizing a mechanism intended to shield judicial selection from direct political influence⁹.

In most African states, judicial service commissions were absent from the colonial judicial framework. During the colonial period, the appointment of judicial officers remained the exclusive prerogative of the governor and, in certain cases, of the British monarch. It was only through the independence constitutions that such commissions began to appear, reflecting an institutional shift influenced by the Westminster model. These constitutions, however, were drafted under the guidance of colonial legal advisors and incorporated democratic principles that had rarely been observed in practice during colonial rule. As Saba observes, many provisions were transplanted from colonial governance structures and primarily designed to safeguard the personal and property rights of the departing colonial elites rather than to foster genuinely inclusive democratic governance¹⁰. Sir Fred Phillips reinforces this view, noting that the independence constitutions of African states were largely prepared by lawyers under the direction of the Colonial Office. These constitutional texts typically included clauses mandating that judges be appointed upon the advice of judicial commissions, thereby embedding the institution into the post-independence legal order. Nevertheless, newly independent governments were bound to operate within frameworks negotiated with their former colonial rulers¹¹. In Somalia, a Judicial Service Commission was first established in 1956 under Law No. 5. This raises the critical question of whether the dissolved model of Somalia's JSC could effectively safeguard judicial independence and accountability, or whether the emerging model currently under consideration offers a more suitable institutional framework. In either case, it remains essential to periodically review the composition, mandate, and independence of the JSC to ensure its capacity to uphold impartiality and maintain the judiciary's autonomy¹².

2.1 Rationale for Judicial Service Commissions

Judicial councils are institutional bodies designed to remove the appointment and promotion of judges from partisan political processes while preserving mechanisms for accountability. As Garoupa and Ginsburg explain, these bodies operate between two institutional extremes: on one end, permitting judges to appoint their own successors and manage internal discipline; on the other, granting the political branches unfettered authority over appointments, promotions, and disciplinary measures¹³. The terminology used to describe these institutions varies across jurisdictions. While often referred to as Judicial Service Commissions (JSCs), in other contexts they are known as "judicial councils," "merit commissions," or "judicial appointments commissions." Despite these differences in nomenclature and composition, their mandates are broadly similar. As Hammergren, Garoupa, and Ginsburg observe, JSCs serve as protective mechanisms, shielding the judiciary from executive interference in judicial

⁷ Thuki, Njeri. "A Comparative Analysis of Judicial Councils in the Reform of Judicial Appointments between Kenya" (2019). *Digital Commons Law*. Online: <https://digitalcommons.law.seattleu.edu/>

⁸ Garoupa, Nuno & Tom Ginsburg. "The Comparative Law and Economics of Judicial Councils" (2009) 27:1 *Berkeley Journal of International Law* 53 <https://www.jstor.org/stable/25660447>

⁹ Ibid

¹⁰ Saba, Alexander Martin. *The Constitutional Role of Judicial Service Commission* (2019).

¹¹ Thuki, Njeri. "A Comparative Analysis of Judicial Councils in the Reform of Judicial Appointments between Kenya" (2019). *Digital Commons Law*. Online: <https://digitalcommons.law.seattleu.edu/>

¹² Law No.5. 1956

¹³ Garoupa, Nuno, and Tom Ginsburg. "Guarding the Guardians: Judicial Councils and Judicial Independence." *American Journal of Comparative Law* 57 (2009): 103.

selection while ensuring that judges remain accountable for their conduct¹⁴. The rationale for establishing judicial commissions lies in safeguarding the judiciary's institutional independence from other branches of government. This autonomy is a prerequisite for the practical realisation of the doctrine of separation of powers. By entrusting the appointment, discipline, and promotion of judges to a dedicated body, JSCs enable the judiciary to regulate its own affairs, free from undue political influence, and thereby reinforce its status as a distinct and coequal branch of government¹⁵.

3.0 Historical and Structural Evolution of Somalia's JSC

Somalia's experience with a higher judicial council dates back to the Italian Trusteeship period in 1956, marking the first formal establishment of such a body in the country.

The establishment of Somalia's first Higher Judicial Council in 1956 marked a significant step toward safeguarding the independence of the judiciary. This initial body consisted of the President of the Court of Justice, the Judge of the Appeal Court, and the Attorney General. Following the adoption of the 1960 Constitution, the Council underwent substantial restructuring in 1962 under the Law on the Organization of the Judiciary (1962). Headquartered in Mogadishu, the reconstituted Council was chaired by the President of the Supreme Court and included the Attorney General, members of the Supreme Court, and three lay members neither parliamentary deputies nor practicing attorneys elected by the National Assembly for a three-year term. Administrative functions were carried out by the most senior registrar of the Supreme Court, who served as the Council's secretary¹⁶. In September 1974, the Law on the Judicial System replaced the 1962 framework, abolishing the Higher Judicial Council and creating instead an Inspection Office. This new body, directly subordinate to the ruling regime, was primarily tasked with ensuring compliance with the political system and safeguarding the interests of the government. Its mandate included supervising the performance of judicial officers¹⁷. The Inspection Office comprised three members: a judge of the Supreme Court appointed by the Chief Justice; a judge of at least A4 rank appointed by the Secretary of State for Justice and Religious Affairs; and the Director of the Judicial and Professional Department of the Ministry of Justice and Religious Affairs. Leadership was held by a judge appointed by the Chief Justice for a term not exceeding one year, while the secretary also serving a term of no more than one year was appointed by the Secretary of State for Justice and Religious Affairs¹⁸.

After nearly a decade of military rule during which Somalia lacked a constitution and was governed through presidential decrees the regime introduced, for the first time, a national constitution. While this constitution provided for the establishment of a Higher Judicial Council chaired by the President of the Republic, the body was never constituted in practice¹⁹. Under the 1979 Constitution, the Higher Judicial Council was designated as the governing body for judicial policy and general administration. Its functions included advising the President on pardons, appointing, replacing, and promoting judges and prosecutors, and supervising their performance and conduct. Article 105 of the Constitution explicitly named the President of the Democratic Republic of Somalia as its chairman²⁰.

3.1. Powers of the council

The Higher Judicial Council was responsible for safeguarding judicial independence and supervising the courts through the President of the Supreme Court. Its authority covered members of the judiciary and supporting staff, the regulation of competitive examinations for judicial appointments, and the provision of binding recommendations to the Ministry of Justice and Religious Affairs on appointments, transfers, promotions, terminations, and disciplinary matters. It also advised the Minister on the organization and administration of justice, reviewed relevant laws and regulations, and could request

¹⁴ Hammergren, Linn. *Do Judicial Councils Further Judicial Reform? Lessons from Latin America*. Washington, DC: World Bank, 2002.

¹⁵ Ibid

¹⁶ *Law on the Organization of the Judiciary*. 1962. Article 27.

¹⁷ *Law on the Organization of the Judicial System*. 1974. Art. 28

¹⁸ Ibid

¹⁹ Ali, Avv Dahir. Lawyer. Interview with the author. 25 December 2022, Mogadishu.

²⁰ *Constitution of the Somali Democratic Republic*. 1979. Article 105.

necessary information from the Public Administration²¹. The mandate of the Inspection Office encompassed a broad supervisory and administrative role over the judiciary. It was empowered to conduct inspections and audits to evaluate the functioning and efficiency of judicial offices, as well as to initiate disciplinary measures against judges, which could result in suspension or dismissal. Additionally, it advised on matters such as the allocation of court facilities, adjustments to judicial staffing levels, and the reassignment of judges to enhance institutional performance. The Office was further authorized to carry out any inspection or investigation pertaining to judicial affairs²². The Inspection Office operated upon request from the Minister of Justice and Religious Affairs, the Chief Justice of the Supreme Court, or the Attorney General, exercising exclusive authority over matters expressly assigned to it. All suggestions, complaints, or proposals for institutional improvement submitted to other offices were to be referred to the Inspection Office, which was responsible for reviewing the matter, issuing its opinion, and transmitting a written report to the Ministry of Justice and Religious Affairs²³.

3.2. Post conflict

Following the overthrow of the Barre regime in 1991, Somalia was left without a central governing authority. The ensuing power vacuum fostered clan based political structures and prolonged internal armed conflict among rival clans and factions. Nearly a decade later, in 2000, peace negotiations held in Carta, Djibouti, culminated in the adoption of a new Transitional National Charter. This blueprint re-established a central government and provided for the creation of a High Judicial Council. This Council is the judiciary's principal administrative body, comprises the Chief Justice, two Supreme Court judges, the Attorney General, and five independent legal professionals three appointed by the parliament and two by the Council of Ministers²⁴.

The 2004 Transitional Federal Charter introduced a federal system of governance in Somalia and established the Judicial Service Commission as part of its institutional framework. The Commission comprised the Chief Judge of the Supreme Court, the Attorney General, three judges appointed by the Supreme Court, and four lawyers nominated by the Somali Lawyers Association. Each member served a five-year term, enjoying the same rights and privileges as judges²⁵. Two years into his presidency of the Transitional Federal Government (TFG) sought to rebuild Somalia's justice system, including the Judicial Service Commission (JSC). His attempts to accelerate progress by appointing multiple Chief Justices failed amid intensifying conflict between the TFG and rival factions, compounded by insecurity, financial shortages, and political instability, which hindered the JSC's establishment despite its recognition under the Transitional Federal Charter. In early 2009, the election of Sheikh Sharif Sheikh Ahmed brought new energy to judicial reform in Somalia. His government appointed two Chief Justices and, for the first time since the civil war, created an interim Judicial Service Commission (JSC) to oversee the courts and prepare for a reformed justice system. This interim commission became a sign of hope for Somalia's long divided judiciary and a step toward rebuilding its institutions²⁶.

While the president sought to restore confidence in the interim Judicial Service Commission (JSC) by strengthening judicial independence and efficiency, the Chief Justice regarded the Commission as an obstacle. Although vested with significant authority, the Chief Justice was frequently constrained by the JSC, which possessed the mandate to appoint and dismiss federal judges. Exercising its oversight role, the JSC limited his ability to shape the federal judiciary unilaterally. Over time, the Chief Justice

²¹ *Law on the Organization of the Judiciary*. 1962. Article 27.

²² *Law on the Organization of the Judicial System*. 1974. Art. 29.

²³ *Law on the Organization of the Judicial System*. 1974. Art. 30

²⁴ *Arta Charter*. 2000. Article 33.

²⁵ *Transitional Federal Charter*. 2004. Article 63.

²⁶ Elmi, Afyare A. *Rebuilding Somalia's Broken Justice System*. Heritage Institute for Policy Studies, 2021.

grew increasingly dissatisfied, interpreting these checks as a deliberate attempt to undermine his authority.

To evade the constraints imposed by the interim Judicial Service Commission (JSC), the Chief Justice, actively lobbied the newly elected President Hassan Sheikh Mohamud and his senior advisors, characterizing the JSC as both unlawful and obstructionist. His argument carried legal base: the JSC had been constituted under Article 63 of the Transitional Federal Charter (TFC), which expired in August 2012, while the subsequently adopted Provisional Constitution of Somalia (PCOS) also in August 2012 prescribed an entirely different process for establishing the body. Furthermore, the JSC's actions were perceived as reprisal, aimed at countering Chief's efforts to free the Supreme Court from the constraints of its oversight authority. The newly elected president identified judicial reform as one of the six pillars of his policy agenda and regarded the continued existence of the interim Judicial Service Commission (JSC) as a major obstacle to his envisioned reforms. Consequently, he dissolved the interim JSC with the intention of establishing a new body aligned with the Provisional Constitution and consistent with his reform objectives²⁷.

The members of the Judicial Service Commission outlined by new the provisional federal Constitution consistent of;

The Chief Judge of the Constitutional Court, the Chief Judge of the Supreme Court, the Attorney General, two members of the Somali Bar Association, the Chairperson of the Human Rights Commission; and three eminent individuals of recognised integrity within society, nominated by the Council of Ministers and appointed by the President. The terms of office for both the Bar representatives and the distinguished members are four years, renewable only once²⁸. In early 2014, a prominent and a key presidential advisor, was appointed Minister of Justice. Rapidly advancing the objectives outlined at the justice reform conference, which he had also helped organize, Farah guided the establishment act of a new Judicial Service Commission through parliament within a few months. The legislation passed in a closely contested vote: of the 147 MPs present on 8 July 2014, 79 supported it, 59 opposed it, and nine abstained. Despite the narrow margin, the enactment of the law was widely celebrated as a significant achievement for the Ministry of Justice. While the Minister of Justice, made multiple efforts to establish the Judicial Service Commission, dedicating significant energy to the initiative. However, in September 2014 just two months after the JSC Act was passed by parliament and shortly after the cabinet rejected the names he proposed, unexpectedly removed him from the office. The Minister contended that this dismissal was part of a coordinated effort by various stakeholders aimed at undermining his ambitious reform agenda²⁹. And in 2016, appointed a new Minister of Justice, made several attempts to establish the Judicial Service Commission. However, the Ninth Parliament ultimately rejected the list of nominees he proposed, citing two main reasons: only five of the nine JSC members had been submitted for vetting, and the country was already in an election period (SBC, 2016)³⁰.

On 17 November 2020, the Tenth Parliament approved only five members of the Judicial Service Commission, nearly four years after the Ninth Parliament had rejected a similar list, despite a political climate largely unchanged since 2016 (BBC, 2020)³¹. This council was subsequently dissolved by President Hassan Sheikh, in a decree issued on 12 October 2022, the president instructed the cabinet to form a new commission. The commission was appointed two years later amid opposition from political parties, led by the current president, who argued that the caretaker government lacked the mandate to approve its members. This is not the first instance in which President Hassan Sheikh Mohamud has dissolved the Judicial Service Commission. In a decree issued on 11 March 2015, he declared the existing commission unconstitutional and inconsistent with the Judicial Service Commission Act.

²⁷ Yusuf, Abdirahman. *Somalia: An Unconvincing Progress*. Al Jazeera Centre for Studies, 2014.

²⁸ Somalia, *Provisional Federal Constitution*, 2012, arts 109A, 111A.

²⁹ Elmi, Afyare A. *Rebuilding Somalia's Broken Justice System*. Heritage Institute for Policy Studies, 2021.

³⁰ SBC, *Baarlamaanka Soomaaliya oo Dib u Celiyey Golaha Adeegga Garsoorka* (Mogadishu, 2016)

<https://allsbc.com/baarlamaanka-somaliya-oo-dib-u-celiyay-golaha-adeega-garsoorka>

³¹ BBC, *Ansixinta Xubno ka Mid ah Golaha Adeegga Garsoorka* (Mogadishu, 2020) <https://www.bbc.com/somali/war-54000000>

Consequently, years after of the commission's dissolutions, the country remains without a functional Judicial Service Commission³².

4.0 Constraints hindering the establishment of the commission

The National Judicial Service Commission plays a vital role in ensuring that the judiciary remains independent, efficient, impartial, and credible. Establishing this body therefore remains essential for meaningful judicial reform. In recent years, different administrations have attempted to create the council, but none have succeeded. To understand this failure, we conducted interviews to identify the main factors hindering its establishment. The findings highlight the following key obstacles: Before addressing the challenges that hinder the establishment of the current Commission, it is important to summarize some major obstacles that the Higher Judicial Councils faced prior to the 1991 collapse of the state. Earlier judicial councils in Somalia faced significant challenges that constrained their effectiveness. The first council, established in 1956 under colonial administration, functioned in a context where the government lacked full sovereignty and prioritized political independence over institutional development. Consequently, the judiciary remained marginalized, and the council made little progress. The absence of a complete judicial hierarchy further restricted its operations. Before independence and the unification of the two regions, Somalia's justice system remained fragmented across municipalities and regions. Policymakers sought to create a unified judiciary, and after extensive deliberation, they enacted the Unified Code of Judicial System to consolidate the different structures. This reform introduced new challenges, particularly, struggled to function effectively because Somalia lacked qualified professionals to share responsibilities across state institutions. This shortage slowed the development of the judiciary and weakened the higher Judicial Council, which depends on an educated society to oversee its work. Moreover, without capable Somali leaders in senior positions, the Higher Judicial Council failed to meet its institutional goals³³.

When the military seized power in 1969, they dismantled all structures they deemed incompatible with their rule, including the Judicial Service Council, which had made notable progress prior to the Revolution. The Council could have expanded its activities to gain broader support, but the regime rejected the supremacy of law, undermining the Council's mandate and essential protections. During the dictatorship, Somalia lacked an independent Judicial Council capable of advancing judicial reform. The Council faced persistent challenges, including politicization, suppression, and lack of independence. Placed under the Ministry of Justice, the Council operated with the President's representative as Secretary, while the President himself chaired the Council³⁴. This arrangement allowed him to appoint and remove members at will, disregarding merit or qualifications, further weakening the Council's authority and effectiveness. This challenge extended beyond Somalia, reflecting a widespread issue across many African states, where executive interference continually weakened judicial independence. In Uganda According to Kamusiime, "the President wields considerable influence because he appoints the majority of the commission members and can remove any member for incompetence. Article 146(7)(c) of the 1995 Constitution confirms that the president's decision to remove a member does not require approval from any other authority. This demonstrates that the commission operates under executive control"³⁵. In Africa as Oganyo observes that the executive has historically posed the greatest threat to judicial independence, largely because it holds a

³² Torch of Liberty African, *Somalia's President Dissolves the Judicial Service Commission Again* (12 October 2022) <https://tola.media/africa/somalias-president-dissolves-the-judicial-service-commission-again/>

³³ Muhammad, Haji NA Noor. *The Legal System of the Somali Democratic Republic*. Charlottesville: The Michie Company, 1972.

³⁴ Avv Dahir. Lawyer. Interview with the author. 25 December 2022, Mogadishu.

³⁵ Kamusiime, B. *The Performance of Judiciary in Administering Justice and Fostering Democratic Principles*. 2014.

direct interest in the outcomes of certain judicial decisions. The executive also wields extensive powers that, if exercised, could weaken the judiciary for instance, by reducing its budget³⁶.

4.1. Current impediments of the commission

The National Judicial Service Commission remains the only institution capable of ensuring an independent, efficient, impartial, and credible judiciary. Its establishment remains essential, and many different administrations have attempted to establish the council, but none have succeeded. To understand this failure, we conducted interviews to identify the main factors hindering its establishment. The findings highlight the following key obstacles:

4.1.1 Federalization of the Judiciary

Judicial federalization presents a major obstacle to establishing a National Judicial Service Commission, as the council forms part of the country's judicial structure. Without consensus on the type of judicial system to adopt, authorities cannot determine the structure or mandate of a High Judicial Commission, despite provisions in the provisional constitution and the council's enabling law. The persistent disagreement and reluctance regarding the council's establishment stem from the fact that, although Somalia operates under a federal political system, its judiciary does not function as a federal institution. According to an interviewee, "Another major challenge confronting the establishment of the Judicial Service Commission is judicial federalization, which has persisted for a long time without resolution." Consensus on the country's judicial system would clarify the type of Judicial Service Council needed, thereby reducing the obstacles to its establishment. Since the judiciary has yet to adopt a clear and mutually agreed model, the Judicial Service Council lacks a framework that satisfies all stakeholders.

As a Somalia's government divides into three branches: legislative (Parliament), executive, and judicial. The federal judiciary plays a critical role in maintaining the balance of power across these branches by protecting constitutionally distributed authorities and safeguarding citizens' rights. Article 108 of the Transitional Constitution addresses the federalization of the judiciary. Stakeholders have made multiple attempts to agree on a federal judicial structure, including the JAWHAR Agreement of 2018 and the Agreement on the Judicial Federalization Process 2022, yet these agreements remain unimplemented³⁷. Given Somalia's federal system, the government must first reach a political consensus on the appropriate structure of the judiciary and the form of judicial services to provide. Without resolving these issues, establishing a Judicial Service Council will remain a significant challenge³⁸.

4.1.2 Politicization of the Judicial Service Commission

The establishment of the Judicial Service Council has faced controversy for a long time. Although laws clearly define the council's structure and functions, stakeholders have not agreed on the method of its implementation. The dispute does not concern the council's legal existence, but rather the obstacles that prevent its formation through proper legal channels. Among these obstacles, politicization remains one of the most significant barriers to establishing the council.

The Judicial Service Council is intended as an independent service institution, not a political forum. However, politicians responsible for establishing it have approached the council through a political lens, prioritizing personal or partisan interests over public service. Political conflicts frequently obstruct the council's formation. One interviewee noted that "this council was used for political disputes and was never seriously pursued; instead, it was pushed under the desk and politicized"³⁹. The establishment of the council remains hindered primarily by politicization, as most potential members are already identified, leaving political interference as the main barrier to its formation.

³⁶ Oganyo Roseline Akinyi, *The Role of Judicial Service Commission* (LLB Thesis, University of Nairobi, School of Law, 2014).

³⁷ Avv Burhan Omar. *Federaaleynta Garsoorka Soomaaliya*. Mogadishu, 2023.

³⁸ Minister Hassan Husein, *Golaha Adeega Garsoorka iyo Maxkamada Dastuuriga* (Mogadishu: Somali Cable, 2018).

³⁹ Ahamed Ali Dahir, *Xaalada Sharci ee Wadanka* (18 July 2020).

4.1.3 lack of commitment

During efforts to establish the Judicial Service Council, top national leaders exhibited a significant lack of commitment, despite their critical role in its formation. While they may not serve as the council's primary members, their active participation is essential for its establishment. Many leaders prioritize short-term political interests over creating a council tasked with ensuring the judiciary's independence, a key pillar of the state's governance. Critics argue that these leaders resist forming the Judicial Service Council because they fear an independent judiciary could determine its own administrative affairs and operate free from executive influence, thereby limiting their control over the country's judicial system.

The president often resists establishing the Judicial Service Council during his tenure, fearing that it could limit his authority and curtail powers he currently wields outside legal bounds. As a result, the judiciary effectively remains subordinate to the presidential office. Notably, many leaders vocally support the council and judicial independence before assuming office, but they shelve these commitments once in power, often abandoning the issue by the end of their term⁴⁰. This pattern demonstrates that the prolonged delay in forming the Judicial Service Council stems from a lack of commitment among top leaders. Had they prioritized its establishment, the council could have been successfully instituted, reinforcing the judiciary's autonomy and the rule of law.

One interviewee noted, "The country's top leaders are the primary obstacles to forming this council because they make critical decisions and lead the nation. Had they prioritized and focused on the council's establishment, it would already exist"⁴¹. The Judicial Service Council has remained unestablished for an extended period, largely due to the top leaders' lack of commitment. This neglect has led to situations where proposed council members face rejection by the people's council amid suspicions of corruption. Many of these leader's act in self-interest and fail to take responsibility for ensuring the council's formation.

4.1.4 Absence of a federal judicial organisation law

The absence of a federal judicial organisation law hampers clarity regarding the country's judicial structure and functions. Without a clearly defined judicial framework, it becomes difficult to determine the judiciary's precise needs. The establishment of a Judicial Service Council depends on a coherent judicial structure that aligns federal, state, and regional levels. Implementing a Federal Judiciary organisation law, as outlined in the National Judiciary Structure and subsidiary institutions, including the Judicial Service Council, would simplify the process. Such legislation would ensure the council effectively upholds the judiciary's integrity and independence. One interviewee explained that Somalia lacked a law establishing a federal judicial service council and that the Constitution remains incomplete and contested. He emphasized that when institutions requiring development receive no attention, legal reforms stall; debates on the proposed council law never advanced to resolution and were ultimately disregarded. If Somalia succeeds in establishing a federal judicial system, the creation of a judicial service council becomes feasible because a draft act already exists; only the design of an appropriate governance mechanism remains unresolved⁴².

4.1.5 Incompleteness of the Constitution

Somalia's provisional Constitution entered into force on August 1, 2012, with the expectation that it would remain provisional for no more than two years. In practice, the provisional period has extended to over a decade, leaving the Constitution effectively in a transitory state. Its ongoing revisions have

⁴⁰ Avv Dahair. *Maxaa Hortaagan Dhisida Golaha Adeega Garsoorka*. (Mogadishu: Somali Cable, 2019).

⁴¹ Ilka Hanaf, *Arrimaha Garsoorka Somalia*, (London: KalsanTV Official, 2018).

⁴² Ilka Hanaf, *Arrimaha Garsoorka Somalia*, (London: KalsanTV Official, 2018).

created significant challenges for multiple institutions, including the judiciary, which has yet to adopt a stable mechanism to implement it. Without consensus on the judicial system's structure at both federal and regional levels, establishing a judicial service council remains unfeasible. One interviewee "emphasized that this situation affects not only the judiciary and the judicial service commission but also other government agencies, which suffer the consequences of constitutional uncertainty". The ongoing review of Somalia's Constitution remains critical to establishing the Judicial Service Council, which the judiciary urgently requires. Attempts to rely on the constitutionally provided procedures for establishing the Council have failed, as these procedures were rejected, leaving no alternative method until the constitutional review is completed and aligned with the judiciary's framework. Several initiatives have faltered for this reason, including the justice and corrections model proposed in Jawhar (2018). Completing the Constitution would simplify the Council's establishment and facilitate the creation of a federal judiciary with a consensual structure that safeguards judicial independence. Accordingly, the country's incomplete Constitution remains a major obstacle to forming both a federal judiciary and a Judicial Service Council⁴³.

4.1.6 Lack of funds

A persistent lack of funding continues to undermine the establishment of the Judicial Service Council. The country faces a general budgetary shortfall, with the judicial branch particularly underfunded, making it difficult to allocate resources for a new council that would require comparable financial support. Years of conflict and destruction have further reduced the funds available to revive the justice sector, even as other branches of government receive relatively sufficient allocations. Consequently, financial constraints remain one of the primary obstacles to the council's creation⁴⁴. One interviewee emphasized that Somalia faces a severe budgetary shortage, particularly within the judiciary, making it difficult to establish a new council that would require funding equivalent to the judiciary's existing financial needs.

3.1.7 Vagueness in the Council's Structure

The council's structure remains ambiguous, as stakeholders have expressed dissatisfaction with the way the provisional constitution establishes it. This dissatisfaction reflects numerous attempts to create a Judicial Service Council with a structure different from the current model.

Divergent views on the council's composition and membership have therefore become a major barrier to its formation. The constitutionally established council and its enabling law fail to suit Somalia, given uncertainties about its members, the powers it exercises, and its role in administering the judiciary. These ambiguities also affect its influence over the judiciaries of the Federal Member States and complicate its overall organizational framework⁴⁵.

5.0 Protection of the judicial service commission's independence

The council secures its independence through the procedures established for its formation. For instance, removing a member requires following the processes initially set forth in the establishment law, preventing interference from external party in the council's operations. Article 2 of the law explicitly states that "the Judicial Service Council, in performing its duties, is independent of the powers of the Legislative branch, the Executive branch, and any other institution, and is subject only to the Constitution and other laws of the country." By codifying these safeguards, the law ensures the council's independence in practice⁴⁶. One interviewee noted that the council's independence depends on members perceiving themselves as autonomous, occupying the highest judicial positions in the country, and performing their duties with confidence, integrity, and adherence solely to the law. However, legal safeguards alone cannot ensure independence. Appointees must demonstrate good faith, high moral standards, professional competence, and personal honor. Without these qualities, even a legally protected council cannot operate independently. Selecting individuals according to the guidelines

⁴³ Ministry of Justice, *Political Agreement on Justice and Corrections in Somalia* (Jawhar, 2018).

⁴⁴ Minister Hassan Husein, *Golaha Adeega Garsoorka iyo Maxkamada Dastuuriga* (Mogadishu: Somali Cable, 2018).

⁴⁵ Avv Burhan Omar. *Federaaleynta Garsoorka Soomaaliya*. Mogadishu, 2023.

⁴⁶ establishment act 2014. Article 2.

established by the founding act and other national laws ensures that appointees remain independent and can resist pressure from the government or its agencies. The independence of the Judicial Service Council directly determines the independence of the judiciary as a whole. Moreover, the Council must exercise autonomy in financial and institutional matters. Without such independence, the judiciary cannot function impartially or uphold the rule of law.

6.0 Somalia's aligned Judicial Service Commission

The establishment of an independent Supreme Judicial Council, separate from the legislative, executive, and other branches of government, forms the cornerstone of an impartial, transparent, and accountable judiciary. The Council holds authority over the administration of the judiciary, including the recruitment, promotion, and dismissal of judges⁴⁷.

The structure of the judiciary differs across countries, depending on the judicial system adopted. Some states maintain a single judicial council that operates at both national and regional levels, while others establish a dual structured system of judicial councils. Similarly, countries vary in the sources from which they select council members⁴⁸. Over the past decade, Somalia has pursued the establishment of a Judicial Service Council to address pressing institutional needs. However, proposals have repeatedly diverged, particularly concerning the council's structure and the composition of its membership. And all the suggested councils have faced different criticisms from the political stakeholders and scholars respectively⁴⁹.

The Judicial Service Council, established under the Provisional Constitution and its enabling legislation, remains unsuitable for Somalia. Criticism centers on its composition, the scope of powers granted, and the lack of clarity regarding its authority within the administration of the judiciary. Dissatisfaction also arises from the Council's potential influence over the judiciaries of the Federal Member States, which undermines the principle of judicial independence. Furthermore, its structure directly contradicts the federalization of the judiciary, as it excludes representation from the Federal Member States⁵⁰. Debates on the federalization of Somalia's judiciary consistently reveal dissatisfaction with the structure of the Judicial Service Council. Competing proposals for reform diverge from the framework established in the Provisional Constitution, underscoring persistent disputes over the Council's legitimacy and institutional suitability⁵¹.

The Jawhar Agreement proposed the establishment of two judicial councils at the federal and state levels. However, this arrangement proved unsatisfactory, as it assumed the judiciary was already suitable for an integrated system, which was not the case. Instead, the High Council of the Judiciary became divided into two parallel institutions, creating further institutional ambiguity. Consequently, on 6 August 2018, the Council of Ministers adopted an executive decision on the judiciary model, recommending the merger of the High Judicial Council into a single, integrated judicial service council⁵².

The agreement on the federalization of the judiciary proposed the establishment of an integrated high judicial council; however, it has been criticized for creating an excessively large membership. Analysts argue that representation from the Federal Member States' high courts provides sufficient participation, making the inclusion of state attorney general's unnecessary, since the supreme courts of the regional

⁴⁷ Somalia, *Judicial Service Council Establishment Act*, art 2 (2014).

⁴⁸ Avv Burhan Omar. *Federaaleynta Garsoorka Soomaaliya*. Mogadishu, 2023.

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Avv Ali halane. Lawyer. Interview with the author. 15 January 2023, Mogadishu.

⁵² Ministry of Justice, *Political Agreement on Justice and Corrections in Somalia* (Jawhar, 2018).

states already exercise jurisdiction over their respective judiciaries⁵³. A balanced administrative framework is essential in light of Somalia's current political and economic realities, as well as the need to safeguard judicial independence and impartiality. To this end, this study recommends the establishment of an integrated High Judicial Council composed of the following members:

- ✓ The Chief Justice of the Supreme Court;
- ✓ The Chief Judge of the Constitutional Court;
- ✓ The Attorney General;
- ✓ The Chief Justices of the Supreme Courts of the Federal Member States and the Chief Justice of the Capital City, in accordance with its agreed status;
- ✓ Three senior lawyers from the Somali Bar Association shall serve on the Council, each for a term of five years.
- ✓ Two members with legal expertise, hold a university degree, possess at least ten years of professional experience, and serve a term of five years.
- ✓ A member of the Human Rights Commission, nominate by the Minister of Justice of the Federal Government of Somalia and submitted to the Council of Ministers of the Federal Government for approval.

This structure seeks to strike a balance between federal and state representation while ensuring professional competence and impartial oversight.

Conclusion

The Judicial Service Commission (JSC) serves as the primary constitutionally mandated body responsible for promoting and safeguarding judicial independence and accountability, while ensuring the effective, transparent, and equitable administration of justice. The Constitution charges the JSC with securing both institutional and individual autonomy in judicial decision-making, highlighting the necessity of establishing a National Judicial Service Commission. Somalia's history of higher judicial council's dates back to the Italian Trusteeship era in 1956, marking the first establishment of such a body. This was followed by the 1962 council, which detailed its powers and structure under the Law on Judiciary Organization. However, the military takeover in 1969 led to the abolition of all institutions perceived as constraints on their authority. Consequently, the higher judicial council was dissolved, and its responsibilities were transferred to the Supreme Revolutionary Council, eliminating any independent judicial oversight during the military regime. Following the state's collapse, the 2004 constitution established an interim Judicial Service Commission, which operated for a limited period. The 2012 Provisional Federal Constitution subsequently referenced a different council; however, this body has yet to be formally constituted.

This historical trajectory underscores the ongoing need for a fully operational and constitutionally empowered National Judicial Service Commission to uphold judicial independence and accountability in Somalia.

The Judicial Service Council (JSC) operates independently of the legislative and executive branches, as well as any other state institutions, and answers solely to the Constitution and applicable national laws. This independence is reinforced by the expectation that council members regard themselves as autonomous, hold the highest judicial authority in the country, and perform their duties with integrity, honesty, and adherence to the law. Although Somalia's judiciary provides a foundation for reform, it currently lacks the confidence, autonomy, and credibility required for true judicial independence. At present, political influence undermines the system: judges may be appointed through political channels, while the Attorney General and Chief Justice are often selected by the President to serve partisan

⁵³ Ibid

interests. While this presents a significant challenge, it is a problem that must be addressed. Establishing a Judicial Service Council is a critical step toward insulating the judiciary from executive interference and ensuring its independence.

A judiciary cannot function independently without a Judicial Service Council (JSC), as the council serves as the structural safeguard for the judicial system, protecting it from interference and mitigating negative influences from other branches of government. If established effectively and in accordance with the law, the JSC can reinforce the principle of separation of powers, ensuring that the judiciary operates independently of political pressures and emerges as a strong and impartial institution alongside the executive and legislative branches. A fully functional JSC would enhance the judiciary's fairness and equity, positioning it as a cornerstone for resolving political conflicts and restoring stability. In this sense, a judicial system without a JSC resembles a house without a roof, unprotected from the elements and vulnerable to external harm. This study emphasizes the need for further research to identify the obstacles to establishing a Judicial Service Council and to support the broader recovery and strengthening of Somalia's judiciary.

Recommendations

1. To the Government

Federalization of the Judiciary: The government should actively pursue the federalization of the judiciary, as this will facilitate the establishment of a Judicial Service Council. Currently, the absence of a federal judicial structure hinders progress.

Avoid Politicization: Top officials across all branches must collaborate to establish the JSC while preventing political interference, ensuring the council functions as an impartial administrative body rather than a political institution.

Complete the Constitution: Expedite the adoption of a full federal constitution. A complete constitutional framework would provide legal clarity for establishing the JSC with a defined structure, roles, and powers.

Federal Judiciary Legislation: The parliament should draft a federal judicial system act that mandates an independent Judicial Service Council and gains approval from all relevant authorities to reduce barriers to its establishment.

Leadership Commitment: Senior leaders must assume responsibility and adopt a unified vision for the JSC, recognizing its importance in strengthening both the judiciary and the broader administrative system.

Clarify Council Structure: The Constitutional Review Council and the National Security Council should define a council structure aligned with Somalia's political culture and current realities, reducing inconsistencies from ad hoc proposals.

2. To Civil Society

Advocacy and Oversight: Civil society organizations should advocate for the establishment of an independent Judicial Service Council, monitoring government progress and ensuring transparency in the process.

Capacity Building: Support training programs and public forums to educate citizens and legal professionals about the role and importance of the JSC in safeguarding judicial independence.

Policy Input: Participate in consultations regarding the council's structure and powers, ensuring recommendations reflect the needs of both the judiciary and the public.

3. To the Public

Awareness and Engagement: Citizens should remain informed about the JSC's objectives and functions, recognizing its role in protecting judicial independence and promoting fair justice.

Demand Accountability: The public should hold leaders accountable for delays or politicization in establishing the JSC, emphasizing its importance for restoring trust in Somalia's judicial system.

Support Reform Efforts: Engage in constructive dialogue and community initiatives that reinforce the principles of transparency, impartiality, and fairness within the judiciary.

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