

# THE DOCTRINE OF RULE OF LAW IN SOMALIA: AN OVERVIEW



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## 1. Executive Summary

It can be said that the real meaning of the rule of law has been very weak since the inception of Somalia in 1960. In this study, there are three broad aspect of the rule of law to consider before we draw the conclusion (a) There was no full understanding under the concept of the rule of law during the nine years of civil government from 1960-1969, since the concept was inherited from the colonial powers but the European colonial master, on the other hands, equally suffered from being arbitrary, capricious and disorganized (b) When the military government came to power, certain provisions of the existing constitution were partially or wholly suspended through the usual Constitution Suspension and legal notice. This process was usually an attempt to maintain power, gain legitimacy for the government and to ensure that popular discontent with the military was killed without minding the considerable erosion of the rule of law. To suspend the constitution amounts to infringing on the collective will of the people as contained in the constitution that is ordained by the people for themselves which are the very foundation of the rule of law and constitutional order. Moreover, the military ruled by Decrees and usually most of the decrees have ouster clauses the provision of which makes anything done or purportedly done pursuant to or under such decrees non-justiciable.

Mostly, the military is characterized the suspension of the constitution, abuses of human rights, dismissal of democratic institutions (executive and legislature) though leaving the judiciary that cannot just be washed away under any disguise, but not without some bruises; restriction of jurisdiction of the courts by decrees. With this there was a running battle between the courts and the military, with the courts flying to jealously guide their jurisdiction on the one hand its actions go unchallenged on the other hand. But as usual, the courts have the judgment, but no enforcement machinery. Lastly, the rule of law in the relevant facts from the post-conflict in 1991 and present time had been discussed through this legal analysis since Somalia is among the lowest overall rule of law scores in the world.

To overhaul the country's rule of law and constitutional building are two concepts at the heart of sustainable democracy in Somalia. Broadly speaking, the rule of law requires that everyone, including Federal Member States (FMS) and Federal Governments as well as citizens are bound by and should be treated equally under the law. Constitutions, meanwhile, form the central repository and ultimate safeguard of the rule of law at a regional level,

*“The real meaning of the rule of law has been very weak since the inception of Somalia in 1960*

providing a blueprint for a functioning system of rule of law and protecting and empowering the institutions that implement and enforce this system.

The study however found a significant challenge facing the rule of law in Somalia, including the followings: -

*“Equality before the law does not mean that the power of a private citizens is the same that of public officials like parliament and judiciary*

- I. **The study found that the protection of numerous constitutional rights were in contravenes to some of the core requirements of the rule of law.** Under the Somali constitution, equality before the law does not mean that the power of a private citizens is the same that of public officials like parliament and judiciary have several powers, immunities and privileges which ordinary citizens do not have. The judges are not answerable to the court of law in discharge of his judiciary function. No civil or criminal proceedings whatsoever can be instituted against judges or legislature of state, while he or she is on duty.
- II. **Provisional and long process of drafting the country’s constitution:** A constitution is fundamental and supreme law of any sovereign states. It provides the key democratic principle such as the rule of law, establishing stable political institutions and introducing efficient government. The current provisional constitution of the Federal Republic of Somalia was started in 2000 and it lasted for 12 years (2012), which remained unfinished document till today. This is the first nation in the history of the world to adopt writing a constitution which took several years.
- III. **Collecting trustworthy official data on the rule of law** is difficult due to a number of institutional, operational and capacity issues. This problem is made even more difficult when considering crime and victimization statistics as a planning, decision-making, monitoring, and evaluation tool. Somalia is one of the developing nations that does not place a high priority on the use of solid data and statistics to inform public policy. The rule of law sector in these nations disregards the gathering, analyzing, and use of information about the rule of law as a crucial component of their planning, operations, and administrations. The competence and political commitment to gather and use important statistics for planning and administration are typically lacking in countries and rule of law sectors.

*“Somalia has been ranked bottom of Transparency International’s Corruption Perceptions Index every year since 2006*

IV. **Corruption** damages the economy that can lead to the collapse of governments and diminishes citizens' trust in institutions. While it may be possible for corrupt systems to coexist with the functioning of the rule of law, in practice the worse the corruption, the more likely it is to endanger the rule of law. Somalia has been ranked bottom of Transparency International’s Corruption Perceptions Index every year since 2006. Somalia, as in many African countries, policies on rule of law reforms are often formulated, implemented and discarded without any rigorous data analysis on whether they worked or not.

V. **No True Separation of Powers:** Separation of power is a doctrine of the law that is designed to incontrovertibly promote the rule of law. Separation of power entails little or no influence and interference between the three arms of government. The principles of separation of power will promote ‘checks and balances’ to ensure that one arm of government do not act in excess of its constitutional powers. In Somalia, there is a substantial amount of interference and influence especially between the Houses of Parliament (Lower/Upper) and the Executive between the Office of the president and the office of the Prime Minister as well as Federal Government and Federal Member States of Somalia.

## 2. Methodology

The study adopted doctrinal research analysis; this analysis was based primarily on legal-doctrine as contained in primary and secondary sources. The research methodologies for this study were also include an extensive literature review of relevant material and documents available on the Rule of law in Somalia. The primary sources are main statutes such as, Constitution of Somalia 2012, the Constitution of Somalia in 1960 and 1979; the Transitional National Charter in 2000, The National Security Court, Public order law of 1964, Civil Service Law of 1962 and Secondary Sources were also included Textbooks, Journal, Articles, Law Dictionaries, Internet material, Reports, and Periodicals.

### 3. Introduction and Historical Perspectives

*“The rule of law in Somalia has failed to establish equality in a homogeneous society like Somalia*

The rule of law in Somalia has failed to establish equality in a homogeneous society like Somalia; therefore, it is on the verge of losing its influence as a powerful standard of social order. Instead, the ‘government of wise man’ rules the nation rather than the government of law. It failed to build confidence among the people even after more than 60 years of its rule in this country and the majority of its citizens resolved their dispute outside the courts of law. For example, the dispute resolution mechanisms ‘ADR’ are one of several approaches to improve access to justice following the collapse of state institutions and the civil war in 1990-92.<sup>1</sup> More so, these mechanisms also resolve capital offenses like murder and rape cases.

Providing security and stability for the citizens are the core responsibility of all States and indeed the very basis for the development of kind. However, every day, violence destroys lives and livelihoods, breeds fear and terror and has a profoundly negative impact on human development as well as undermines the rule of law. But the terrorism in Somalia like Al-Shabaab was responsible for 88% of all death in 2019, which resulted in 503 fatalities, according to Global Terrorism Index in 2020.<sup>2</sup>

Somalis, culturally the most homogeneous nation on the continent, fell prey to colonial machination during the last quarter of the nineteenth century. The land and the people were partitioned into five domains under three European and one African colonial power. Two of these colonies, British Somaliland and Italian Somaliland became the Somali Republic on July 1, 1960.<sup>3</sup>

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<sup>1</sup> Expanding Access to Justice Program (2020) ‘ Alternative Dispute Resolution Initiatives in Somalia’ available at <https://www.usaid.gov/sites/default/files/documents/1860/ADRReport.pdf>. Accessed on 04/September/2022

<sup>2</sup> Global Terrorism Index ‘Terrorism in Somalia: Al-Shabaab Continues Deadly Attacks’ (2020), available at <https://www.visionofhumanity.org/country-close-up-terrorism-in-somalia/>.

<sup>3</sup> Abdi Ismail Samatar ‘African First Democratic Somalia’s Aden A. Aden And Abdirazak H.Hussein’ (2016) Published *Indian University Press* at 27

The independence constitution was drafted in 1960 and approved in a referendum in 1961, established a parliamentary system of government. In 1969, the military regime assumed power by overthrowing the first democratically elected government, and declared ‘scientific socialism’ to be the official ideology.<sup>4</sup>

However, power remained concentrated the military regime amidst growing clan-based internal conflict until an internal Somali rebellion overthrew the regime in 1991. From this year of 1991, Somalia has had three different central governments, but none of them have been able to seize power since they are incompatible with social consensus and all were established outside the country.<sup>5</sup>

After years of civil strife, Somalia attempted to create a Transitional National Charter in 2000 (TNC). A decentralized unitary state based on regional autonomy was founded by the Charter, however it was in vain.

Following new negotiations for peace talk in 2004, Somali stakeholders decided to draft a new constitution based on a federal system (TFG) to replace the decentralized unitary system of the interim national charter. Thus, it was not until 1<sup>st</sup> August 2012 that a new constitution was ‘Transitionally’ promulgated by a National Constituent Assembly (NCA) comprising 825 members representing on behalf of different sections of the Somali society.<sup>6</sup> The new constitution was further anticipated to refine before it is finally adopted by a referendum but was impractical under the security circumstances.



<sup>4</sup> Mehari T. M., ‘The Future Of Somalia’s Legal System And Its Contribution To Peace And Development’ (2008), *Journal of Peace building & Development* , Vol. 4, No. 1 (March 2008), pp. 1-15

<sup>5</sup> Becca Eber, ‘Institutional Consensus: A Comparative Analysis of Rules of Law in Lebanon and Somalia’ (2015) *Politics & Government Undergraduate Theses*. Paper 1. t: available at [http://soundideas.pugetsound.edu/pg\\_theses](http://soundideas.pugetsound.edu/pg_theses).

<sup>6</sup> UN News, ‘UN officials welcome ‘historic’ approval of new constitution for Somalia’ (2012) available at <https://news.un.org/en/story/2012/08/416812-un-officials-welcome-historic-approval-new-constitution-somalia>. 30/ july/2012



*“At the time of writing this legal research paper marked the 10 years of birthday to the Somali constitution from 1st August 2012 to 1st August 2022*

At the time of writing this legal research paper marked the 10 years of birthday to the Somali constitution from 1<sup>st</sup> August 2012 to 1<sup>st</sup> August 2022. The ***Garmaal Institute*** family wishes a happy birthday to the constitution of Somalia and extended their wishes to those who drafted down from the committee of experts, the national constituent assembly (NCA) the Federal Government, federated states and international community to promote the rule of law and the quality of governance, the capacity of its legal and political institutions in Somalia.

#### **4. Origin of Rule of Law**

No one is sure when exactly the rule of law was formulated as a philosophical or legal concept. Just like the hazy origin of the rule of law, it is yet unsettled as to the exact meaning, content and scope of the rule of law.<sup>7</sup> This has forced a suggestion that the rule of law is an elusive thing that has over the years given rise to rampant divergence of understandings.<sup>8</sup> But it is generally accepted that modern classical exposition of the rule of law should be credited to the works of A. V. Dicey.

*“The term rule of law was used as one of the basic objective principle of the constitution to promote human right separation of power*

According to **Black’s Law Dictionary 2<sup>nd</sup> edition** states that the ‘Rule of law’ means legal principles of day-to-day application, approved by the governing bodies or authorities and expressed in the form of logical proposition. The term of the ‘rule of law’ is nowhere defined in the Somali Constitution but this term was used as one of the basic objective principles of the constitution to promote the rule of law, human right and separation of powers.<sup>9</sup> The security forces are required under the constitution to uphold the rule of law, democratic institution and fundamental rights according to article 127 (b) of the constitution.

To promote uniformity in usage and understanding of the rule of law, the UN Secretary General in his report to Security Council in 2004, provided a detailed definition:

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<sup>7</sup> Craig, P. P. ‘Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework’ (1997) University of Exeter at p. 467 Framework’

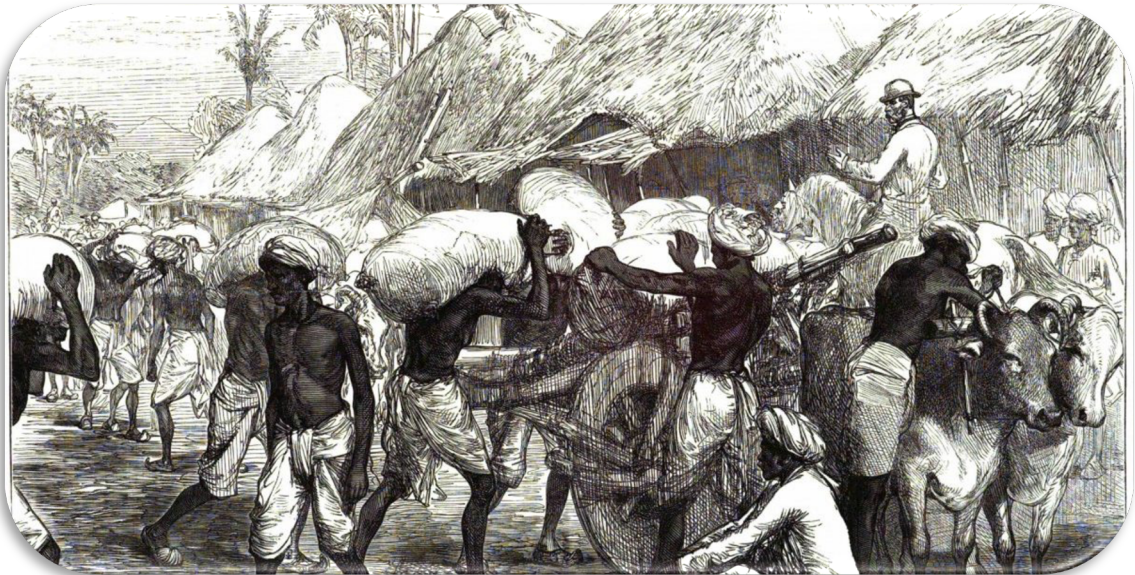
<sup>8</sup> Tamanaha, B. Z., ‘On the Rule of Law On the Rule of Law: History, Politics, Theory’ (2004). Cambridge University Press, p. 9

<sup>9</sup> See, Article 3 Clause 4 of the Constitution

*‘The “rule of law” refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency’.*

## **5. Colonialism and Rule of Law in Somalia (1885-1960)**

During in 1885, the eastern African coastal state of Somalia increasing came under control of the European fortress, which was assisted by the executive council and the legislative council. The executive council was a small advisory body of European officials that recommended laws and voted taxes, subject to the governor’s approval.<sup>10</sup>



Probing the colonial period and its correlation to the rule of law seems counter-intuitive since colonialism implies the exercise of power, and the rule of law portends to bound power. But looking at the historical practices in the colonial era illuminates how the rule of

<sup>10</sup> Daniel E. H., ‘Central and East Africa: 1880 to the present: from colonialism to civil war (2002), published by Chelsea House publishers first edition at 95-108

law was an element in the development of an unequal system of international economics, politics, and law. The relationship between colonial regimes and ideals of the rule of law has led some observers to reject the rule of law as a tainted instrument.<sup>11</sup>

The European colonial powers delivered a system of law to their possession in Africa including Somalia. One objective of this article is to inform current discussion by tracing those linkages in the country's colonial and early post-colonial periods. However, the question is not whether or not either British or Italian who colonized Somalia established the rule of law in their colony but law should be viewed as the cutting edge of colonialism.

Colonialism typically involved the large-scale transfer of laws and legal institutions from one society to another, each of which had its own distinct sociocultural organization and legal culture. The result was a dual legal system: one for the colonized peoples and one for the colonizers.<sup>12</sup> *According to law No. 161 (5 April 1908)*, The Italian authority recognized Somalis as subject to customary and *sharia* law.

Similarly, the British in Somaliland for example, generally recognized indigenous law, with the exception of laws that violated British law or were 'repugnant to natural justice, equity, or good conscience. African courts were charged with enforcing indigenous law or 'customary law for Africans, while English law was enforced in a separate system of British courts for Europeans. There was limited appeal possible from African to European courts.<sup>13</sup>

It was stressed that, the European law in the politics of colonizers moved into the legal regimes of colonizers by either through brute force or simple persuasion. The colonial master used law to domain colonized people and extract from their lands, but also provided the colonized with spaces in which they could mobilize the ideology of law to protect at least some of their interests.<sup>14</sup> White juries almost never convicted their inhabitant of a colony of serious offences, such as rape and murder.

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<sup>11</sup> Keally McBride, 'Colonialism and the Rule of Law' published by Oxford University Press <https://doi.org/10.1093/acprof:oso/9780190252977.003.0005>. Pages 94–122 accessed 01/08/2022

<sup>12</sup> Sally Engle Merry, 'Review: Law and Colonialism' (1991) journal of the law and society association' Vol. 25, No. 4 pp. 889-922 [https://www.jstor.org/stable/3053874#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/3053874#metadata_info_tab_contents). Accessed 29/july/2022

<sup>13</sup> Above note no. 8

<sup>14</sup> Massoud, M. F. (2013) *Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan*

Without exception in Africa, colonies adopted the legal system of the metropole upon independence. This occurred for two distinct reasons. First, throughout the entire colonial experience, indigenous peoples were forced to live with a particular system, either the continental civil codes or British common law. At independence, what experience of a national legal system existed was that designed by the continental European powers or the British. Therefore, just as newly independent colonies chose to keep the languages of the metropolises for the conduct of governmental activities, so too they retain the legal and other political institutions left behind.<sup>15</sup>

The second reason is that African countries adopted the institutions of the metropole; elites within the country became adept at negotiating the civil and common law structures and, as a result, had a vested interest in seeing them continue.<sup>16</sup>

As a matter of fact, Somali at independence, the courts and legal regimes developed closer to the civilian law systems than they had been under Italian colonial rule. This was greatly due to the fact that the colonial government permitted special legal status to Muslim and people under customary law. Nonetheless, the civilian legal systems are considered superior in Europe where they are thought to be fairer and more efficient.<sup>17</sup>

*“The civilian legal systems are considered superior in Europe where they are thought to be fairer and more efficient*

## **6. Rule of Law in Somalia after Independence 1960-1969**

When the colonial power left in 1960, Somalia transferred the forms of democracy, legislation, judiciary and administrative apparatus to African Somali people. Every African nation has forced dramatic difficulties since independence, but perhaps none more than Somalia as one of the poorest countries in the region, border disputes, civil war and drought have taken extra-ordinary tolls.<sup>18</sup> Nevertheless, it is important to note that democracy is not an abstract entity. Its achievement is measured by a number of features. Amongst these are the rule of law, solid institutions and governance organizations. It is in this perspective that

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Cambridge University Press, New York, Chapter two

<sup>15</sup> Joireman, Sandra F., "Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy" (2001) 113. At <http://scholarship.richmond.edu/polisci-faculty-publications/113>. Accessed 28/July/2022

<sup>16</sup> Above note no. 12

<sup>17</sup> Sandra F. J., 'Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy' (2001) Published by: Cambridge University Press, *The Journal of Modern African Studies* Vol. 39, No. 4 (Dec., 2001), pp. 571-596 (26 pages)

<sup>18</sup> Above note no. 7

we sought to scrutinize how Somalia has managed its democratic aspirations and respect for the rule of law.

Somalia's justice system and the rule of law have been many encouraging developments during the civilian administration that existed prior to the seizure of power by the Supreme Revolutionary Council in 1969.

The government of Somalia also promulgated a new independent constitution that guarantees fundamental rights on its face, rule of law, the mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a non-arbitrary form of government, and more generally prevents the arbitrary use of power. Some of these fundamental rights includes among others; -

#### **6.1. Right to vote**

Elections under civilian administration were held using universal suffrage and the right to vote, which brought an excellent idea that all citizens have the right to participate in political elections. The right to vote is the first fundamental freedom guaranteed by the constitution for all Somali citizens. According to the constitution, every citizen who meet the legal requirements for voting is entitled to do so. Under the *political Elections and local council's elections law*, set a voting age is a minimum age established by law that a person must attain before they become eligible to vote in a public election. The most common voting age is 18 years and (b) the person to vote should be sound mind.<sup>19</sup>

#### **6.2. Political Representation in Somali Democracy**

There were roadblocks to a strong democracy in Somalia under civil administration 1967 in all levels of government. The Constitution prescribes the formation of political representation. Parties are registered political associations of people, who adopt a political program with which they campaign in order to win and form the government. It is only a political party that is recognized to canvass for votes, or contribute to the election expenses of any candidate at an election. The membership of the political party must be open to all Somalis irrespective of place of origin, sex, religion or ethnic grouping. Therefore, Political

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<sup>19</sup> Law No. 13 of 6 June 1968, this law supersedes political Elections law, Law no.4 of 22 January 1964 and annex to the local administration and local council election law, law no. 19 of 14 August 1963

*“The right to vote is the first fundamental freedom guaranteed by the constitution for all Somali citizens*

and public participation rights play a crucial role in the promotion of democratic governance, the rule of law, social inclusion and economic development, as well as in the advancement of all human rights.<sup>20</sup> In general, the civil and political rights of the citizens were sufficiently safeguarded. Moreover, there was a functioning independent judiciary and political violence was non-existent during civilian rule.<sup>21</sup>

### **6.3. Rule of Law in Public affairs and right to take part in civil service**

The right to participate in public affairs, like other rights enshrined in the Constitution, will be best protected in contexts where the rule of law prevails and there is a clear legislative framework. Article 9 of the constitution recognizes that every citizen who possesses the qualification required by law shall be eligible for public officers. The same rights were also made available under **Section 6 of the Civil Service Law of 1962**, which states that citizens who are at least sixteen years old, physically fit for the position, of good moral character, and possess the necessary educational credentials may apply for positions in the civil service.

*“Somalia enjoyed nine years of parliamentary democracy, arguably producing the first peaceful, democratic transfer of power in Africa*

Somalia enjoyed nine years of parliamentary democracy, arguably producing the first peaceful, democratic transfer of power in Africa. The graceful transition of power from president Aden Abdulleh to President and his former Prime Minister Abdirashid Ali in 1967 was the first time that power was handed over without conflict from an incumbent to a new president in Africa. This created a lasting impression among Africa observes that Somali politics were of democratic nature as well as promoted the rule of law.<sup>22</sup>

However, hopes for a prosperous nation were quickly dashed by the assassination of President Abdirashid Ali Sharmarke in 1969. More so, under the civilian rule between 1960 up-to 1969 the rule of law was slow and sometimes a political reform were also troublesome. The Somali state had become a political marketplace where clan lineages struck deals to share government revenues. The rule of law and democracy had lapsed into commercial

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<sup>20</sup> Haji N. A Noor Muhammed ‘ The Development of the constitution of the Somali Republic’ (1969) published by the *Government of the Somali Republic* at page no. 29

<sup>21</sup> Ahmed A.M. Khayre, ‘Somalia: An Overview of the Historical and Current Situation’ (2016) available electronically at [file:///C:/Users/hp/Downloads/SSRN-id2771125%20\(1\)](file:///C:/Users/hp/Downloads/SSRN-id2771125%20(1)). Accessed on 03/08/2022

<sup>22</sup> Robert K., ‘A political History of Somalia’ (2021) Research-Gate available at [https://www.researchgate.net/publication/358348749\\_A\\_Political\\_History\\_of\\_Somalia](https://www.researchgate.net/publication/358348749_A_Political_History_of_Somalia). Accessed on 30/July/2022

anarchy, and a strong rule of a new type was desperately needed if the state was to be rescued from its present morass of poverty, insecurity and inefficiency. It was at this time when the military regime took over the country, suspended the whole constitution and the civilian government and democratic period came to an end.

## 7. Rule of Law under Military Regime in Somalia 1969-1990

This section of the study were examined the political and legislative framework that has contributed to the violation of Rule of law and human rights under the rule of the Military regime.



### 7.1. Military government and rule of law

Rule of law in Somalia came under great challenge between 1969- 1990 during the military period. The supremacy of the law of land was invalidated by the first **Military Decree Law No. 1 (21 October 1969)**. On 1<sup>st</sup> November, only several weeks after the coup, the military regime issued the above-mentioned legal notice no.1, providing for the establishment of the Supreme Revolutionary council consisting of the commander-in-chief, who shall be the chairman, the vice chairman and other members of the armed forces and commanders.

The first speech delivered by the Maj. General Siyad Barre clearly expressed that: -

*“...Intervention by the armed forces was inevitable,” he said. “I would like to ask all Somalis to come out and build their nation, a strong nation, to use all their efforts, energy, wealth and brains in developing their country,” he continued...“The imperialists, who always want to see people in hunger, disease and ignorance, will oppose us in order that we may beg them... let us join hands in crushing the enemy of our land.”*

The *Military Decree Law No. 1*, in its proclamation also affirmed that, the institutional and ideological framework of the new regime which assigned all legislative, executive, and judicial powers to the Supreme Revolutionary Council. All functions previously performed by the president, the national assembly and the council of ministers as well as many duties of the courts. *Prima facie*, this is a violation of the rule of law. The Military emerged to find grounds for this action in the fact that, it seized power when the constitutional instrument for the change of government through secret ballot paper had been brazenly violated, instead of legitimate expectations of the citizens.

No clear provisions was made for the rule of law and the separation of powers between the arms of government but all this were left in the hand of the Supreme Revolutionary Council. More so, the military officers also replaced civilian district and regional officials. Meanwhile, civil servants attended reorientation courses that combined professional training with political indoctrination, and those found to be incompetent or politically unreliable were fired.<sup>23</sup>

## **7.2. Abrogation of Political Parties**

The military regime took its toughest political stance and later on banned all political parties except the Somali revolutionary socialist party (SRSP). *Under Article 7 of the constitution of Somalia 1979* provided that the Somali Revolutionary Socialist Party shall be the only party existing in the Somali Democratic Republic, no other party or political organization may be established. As result in all the general elections which were conducted under the General Siyad Barre regime, the party flag bearers were declared winners garnering more than 70% of the total voters. Hence it is no longer rule of law; it is rule by law, the law of the ruler.

Additionally, all political emblems and slogans were forbidden. The prohibition even goes so far as to ban the use of political slogans or party names, whether by spoken words, in writing, or in any other form whatsoever.

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<sup>23</sup> Library of Congress, 'The Historical Settings of Somalia' (1993)  
[https://www.loc.gov/resource/frdcstdy.somaliacountryst00metz\\_0/?sp=79&st=text&r=0.036,-0.241,0.927,0.799,0](https://www.loc.gov/resource/frdcstdy.somaliacountryst00metz_0/?sp=79&st=text&r=0.036,-0.241,0.927,0.799,0). Accessed on 30/july/2022



*“The government announced that a multi-party system shall be restored and that parliamentary elections shall also be held by the end of 1990*

After intense of human rights records and faced with a rising number of rules of law crises in the country, then the government embarked on a public relations campaign, in the hope that high-sounding pronouncements would be sufficient to renew economic and military aid. On August 30, 1989, the government announced that a multi-party system shall be restored and that parliamentary elections shall also be held by the end of 1990. The government announced that anyone who wanted to form a political party, then the parties had to meet these two requirements: -<sup>24</sup>

1. Anyone who had participated in or supported armed conflict would not be permitted to form a party and
2. No party shall not be based on tribalism or regionalism

The law legalizing the multiparty system contains 31 articles in three chapters. The first chapter concerns methods of forming parties, their roles, and their right freely to campaign as legal parties among the people, and exceptions and court procedures for parties in the event of problems. Chapter two concerns penalties and violations while Chapter three concerns transitions and winding-up procedures.<sup>25</sup>

Although the government of Somali under the military rule in 1969-1990 would love to reset the public trust in government in order to win back their confidence had left with no option but to go into civil war in 1991.

### **7.3. Unlawful detention**

The abuse of power during the Military regime of the late Gen. Mohamed Siyad Barre was the arbitrary and widespread detention of dissidents, political opponents, and even ordinary Somalis who just expressed an honest opinion on the state of affairs in their country. These incarcerations were usually without any charges, and, in the end, without trial. For this reason, men like Aden Abdillah Osman, the first President of the Somali had to spend months or years in detention, some in solitary confinement.<sup>26</sup> Fostering Corruption in

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<sup>24</sup> Library of Congress, ‘The Historical Sittings of Somalia’ (1993) [https://www.loc.gov/resource/frdcstdy.somaliacountryst00metz\\_0/?sp=79&st=text&r=0.036,-0.241,0.927,0.799,0](https://www.loc.gov/resource/frdcstdy.somaliacountryst00metz_0/?sp=79&st=text&r=0.036,-0.241,0.927,0.799,0). Accessed on 30/july/2022

<sup>25</sup> Above note no. 19

<sup>26</sup> Mahamud M. Yahya, ‘In Siyaad Barre’s Prison: A Brief Recollection’ (2008) available at <https://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1046&context=bildhaan>. Accessed on 4/8/2022

*“Thousands of political leaders across the country have been under detention without stating any reasons*

criminal justice systems where corruption is pervasive, detainees are mostly to be released awaiting trial only if they have politically powerful allies. “

Thousands of political leaders across the country have been under detention without stating any reasons. The country was dominated by a single party whose rule was ‘a rarefied game with little relevance to the daily challenges facing the population.’<sup>27</sup> Somalia’s military rule in 1969 has routinely unlawfully detained in a violation of basic legal rules governing arrest, detention on remand and Indefinite imprisonment without charge or trial is anathema in any country which observes the rule of law.

#### **7.4. Solitary Confinement**

One result of the increased power and authority of these security forces and the absence of any judicial control over arrested persons was a drastic deterioration in the conditions and treatment of prisoners. Opponents of these military regimes were abducted in the middle of the night from their homes by heavily armed persons of the state security apparatus to solitary confinement in prison.<sup>28</sup> Those that have, usually on grounds of cruel and unusual punishment, have discovered that barbarous conditions often accompany the use of solitary. But solitary confinement, with or without egregious accompanying conditions, may itself be constitutionally or adherence to the rule of law are questionable.

#### **7.5. Killing Rampage**

Public execution by firing squad of high-ranking public figures became common in Mogadishu. The execution by firing squad of ten Muslim scholars who denounced a presidential decree regarding the equality of women to men in Islamic law coincided with the United Nations General Assembly’s declaration of the International Women’s Year in 1975. This hasty execution of religious scholars without legal justification put the SRC in political limbo with Muslim scholars especially those from Arab nations denouncing the killings as unjustified and without merit. Killing of opposition candidates and arrest of innocent civilians without legal representation was widespread such that thousands of

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<sup>27</sup> Becca Ebert, ‘Institutional Consensus: A Comparative Analysis of Rules of Law in Lebanon and Somalia’ (2015) Politics & Government Undergraduate Theses. Paper 1.

[https://soundideas.pugetsound.edu/cgi/viewcontent.cgi?article=1004&context=pg\\_theses](https://soundideas.pugetsound.edu/cgi/viewcontent.cgi?article=1004&context=pg_theses). Accessed 1/8/2022

<sup>28</sup> Mohamed Haji E. ‘the suicidal state in somalia: the Rise and Fall of the Siad Barre Regime, 1969-1991

educated elites, fearing the junta's dreaded dungeons, sought refuge in neighboring countries, in the West, and in the Middle East.<sup>29</sup>

#### **7.6. Role of the National Security Court**

Under the military rule several repressive laws enacted thereby a worst kind of National Security Court were established. The National Security Court is a military tribunal which hears political cases. Judges of the National Security Court were nominated from within the armed forces, and had broad powers of detention, arrest and seizure. They had the liberty to take jurisdiction away from all subsidiary, lower-level courts, and there was no right of appeal (except to the SRC itself). From the mid-1970s, political decision making overtook any appearance of judicial independence.<sup>30</sup> The Public Order Law of 1964, essentially an amalgamation of many colonial anti-resistance laws – was used to suppress dissent and civil society mobilization.

*“The National Security Court is a military tribunal which hears political cases*

#### **7.7. Functioning of the Judicial System**

Constitutionalism and the rule of law is the central feature of any political democracy that respect of human rights. An independent judiciary, the essential guardian of the rule of law, is the linchpin of the scheme of checks and balances through which the separation of powers is assured.<sup>31</sup> The Somali constitution which came under the auspices of military powers states that the courts shall be independent in the performance of their function and shall be guided by the rule of law. However, the judiciary's authority and independence are significantly impaired by the military regime's arrogation of judicial power and prohibition of court review of its action.

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<sup>29</sup> Adan Makina, 'Supreme Revolutionary Council Of Somalia: Harbinger Of Social Injustice And Collapse Of State Institutions' (2013) available at

[https://www.academia.edu/4242592/Somali\\_Supreme\\_Revolutionary\\_Council](https://www.academia.edu/4242592/Somali_Supreme_Revolutionary_Council). Accessed 4/8/2022

<sup>30</sup> Andre S., 'Stateless Justice in Somalia Formal and Informal Rule of Law Initiatives' Humanitarian Dialogue Report (2005) available at [https://www.files.ethz.ch/isn/20303/Somalia\\_stateless\\_justice.pdf](https://www.files.ethz.ch/isn/20303/Somalia_stateless_justice.pdf). Accessed on 2/8/2022

<sup>31</sup> Makau Mutua, 'Justice under Siege: The Rule of Law and Judicial Subservience in Kenya' (2001). Published by the Johns Hopkins University Press, *Human Rights Quarterly*, Vol. 23, No. 1 (Feb., 2001), pp. 96-118 (23 pages)

The central function of the court is to nourish the rule of law and prevent societal disorder and anarchy. Any system of government based on such rule should therefore concede to the judiciary as custodian of legal and constitutional rights the vital role of serving as the final arbiter in disputes between people and the government *visa-vis*. Ostensibly, this is no longer the position under the military regime for these two thematic reasons; -

- (a) The separation and independent of the courts were existed only in theory. In practice, the letter is now submerged in the absolute supremacy of the revolutionary council and the members of the judiciary are removable from office at will.
- (b) The former military regime was exhibited a clear official distrust of the court by establishing the national security court (NSC) rather than the regular court for serious trials. Possibly, this is unconnected with the rather poor performance of national courts under first and second of the republic of Somalia. In respect of this, authoritative sources accused the courts of yielding to political and tribal influences thus failing in their role as the custodian of legal and constitutional rights to the Somali citizens.

Since in 1969 to 1991, Somalia has had a military regime but what is notable is that the General Siyad Barre and his military faction regularly declared the rule of law to be the cornerstone of their government despite gaining power through the barrel of a rifle instead of a democratic system along with political liberalization and further developing the rule of law in Somalia.

## **8. Civil war and the Rule of law since 1991-2012**

First, it is necessary to put on record that the Republic of Somalia was dragged into civil wars because their atrocities abolished any semblance of rule of law. The overthrow of Military Regime in 1991 was a prelude to total disintegration. The opposition groups were all clan-based factions fighting for their particular interests. During the civil war in Somalia, played a role in a country's degree of non-compliance in respect of human rights as well as an entrenchment of the rule of law.

*“The opposition groups were all clan-based factions fighting for their particular interests*

It is also undoubtedly proven that during the civil wars there was total disregard for the rule of law because there is no central government which can uphold or enforce several issues in the spheres of fundamental human rights, due process, a climate of legality, separation of powers and sustain the social, political and economic progress which can only be exited in societies where the rule of law are respected.

Between 1991 and 2000, Somalia has evolved into society that entirely rejected a set hierarchy and governing body. Without the rule of law in society, it would be a very different place. People would be able to do whatever they wanted, and there would be no consequences for their actions. Hence this could lead to a lot of crimes and violence, as people would not have to worry about being arrested or going to jail leave alone to protect the supremacy of the law which is accountable for their actions.



## 9. Government Structure 2012

*“Whereby all matters of State in the federal republic of Somalia are vested by the federal Government and the federal member states*

In 2012, Somalia introduced constitutional reforms permitting the establishment of federal system of government.<sup>1</sup> Whereby all matters of State in the federal republic of Somalia are vested by the federal Government and the federal member states (FMS). The central government has authority over all federal member states in the federated Republic. Under Article 48 of the constitution states that the State is composed of two levels of government: (a) The Federal Government Level and (b) The Federal Member States Level. In case of

new federal member state was to be formed, the federal government shall directly administer such state for a maximum period of two years.

“There is no clear structure of the Somali court systems since the country adopted the federal system of governance

Similarly, the federated states have authority within their peoples and its designated territory. In this respect, the federal member states has a separate executive, legislature and a judicial structure, which functions from the primary court level to the federal member states of high courts.<sup>32</sup> There is no clear structure of the Somali court systems since the country adopted the federal system of governance.<sup>33</sup>

The federal member states also exercised through regional and local government or district administrators. **Article 48(b) of the constitution** ‘... the Federal Member States government comprises of local government as well as regional administrators. The function and powers of the above mentioned organs are not stipulated very well in the 2012 constitution which causes in a state of complete confusion and political disorder due to the absence of constitutional court to the interpretation, protection and enforcement of the constitution.

The federal system of Somalia is very weak and it is not clear who is responsible for the rule of the law and democracy or election because the constitution has given two equal powers to the central government and the regional authority. The constitution commands that the federal government in consultation with federal bodies to regulate land<sup>34</sup>, natural resources<sup>35</sup>, environment<sup>36</sup>, national security and peace<sup>37</sup> agriculture, health and education<sup>38</sup> among many others.

The basic requirement of the rule of law is that the powers of the public authorities are defined by law. In so far as legality addresses the actions of public officials, it also requires that they have authorization to act and that they subsequently act within the limits of the

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<sup>32</sup> See, article 108 of constitution of the federal republic of Somalia

<sup>33</sup> Ahmed kheir O., ‘Procedures Of Becoming Legal Practitioners In Somalia: Analytical Reflection’ (2021) *Journal On Contemporary Issues Of Law [Jcil]* Volume 7 Issue 11

<sup>34</sup> See, article 43 of the constitution

<sup>35</sup> Article 44 and 50 of the constitution

<sup>36</sup> Article 45 of the Constitution

<sup>37</sup> See, article 51 (3) of the Constitution

<sup>38</sup> See the whole article 52 of the Constitution

powers that have been conferred upon them, and consequently respect both procedural and substantive law.<sup>39</sup>

## 10. Federal Member states and the Rule of law

*“No foreign nation, including the international organizations, has recognized Somaliland as a sovereign state.*

The Federal Republic of Somalia consists of five federated states, the Banadir Region administration and the de facto state of Somaliland in the country's north. No foreign nation, including the international organizations, has recognized Somaliland as a sovereign state. However, Somaliland’s founders in the 1990s created a political and legal system that has made it a beacon of regional stability, respect for the rule of law and progress.<sup>40</sup>

The provisional constitution of Somalia specifies in Article 1 that “Somalia is a federal state” The Federal Republic of Somalia is based upon the fundamental principles of power-sharing in a federal government as per article 3 clause 3. Conversely, the rule of law and democratization rests not only to the central government but also to the federal member states of Somalia since they administered area of jurisdictions and its population. However, it is important to note that this federal system poses a fresh threat to the rule of law because Somalia's federated states are still contesting the mode of federal system that the country adopted.

Over the past six years, the federalism discourse has been characterized by confrontation rather than collaboration. Failure to reach consensus on a power-sharing model has hampered progress on all other issues of national importance, including promoting the rule of law, institutional and legal framework particularly the provisional Constitution and security.<sup>41</sup> There are also two different aspects that pose fundamental problems against the rule of law in the Somali regional states and the federal government includes: -

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<sup>39</sup> The Council of Europe ‘Rule of Law Checklist’ (2016), Adopted by the Venice Commission at its 106th Plenary Session, available at [https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule\\_of\\_Law\\_Check\\_List.pdf](https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf). Accessed 06/08/2022

<sup>40</sup> Massoud, Mark Fathi ‘The Rule of Law in Fragile States: Dictatorship, Collapse, and the Politics of Religion in Post-Colonial Somalia’ (2020) *Journal of Law and Society* 47(S1), . <https://sci-hub.hkvisa.net/https://doi.org/10.1111/jols>. accessed on 8/9/2022

<sup>41</sup> Abdirizak Aden Muhumed ‘Dysfunctional Federalism’ (2020) Published by *Heritage Institute: for policy studies* available at <https://heritageinstitute.org/wp-content/uploads/2021/01/federalism.pdf>. Accessed on 8/9/2022

### **10.1. Lack of legal harmonization**

Harmonization is very crucial feature of the legal system. Harmonization of the laws of the central government with federal member states is a core instrument of the union for federal governments. Some legal obligations include the obligation to enact applicable law and ensure compliant applications when enforcing the rule of law and democracy. Law diversity is an obstacle to the rule of law between states.<sup>42</sup>

Each Federal Member states have created its own constitution and legal framework which overrides the one of the central government. Article 4 of the Constitution of the Federal Republic of Somalia provides that the Constitution is the Supreme Law of the land after *Sharia* and shall have binding force on all authorities and persons throughout Somalia. Any law or administrative action that is contrary to the Constitution may be invalidated by the Constitutional Court, which has the authority to do so in accordance with this Constitution as per article 4 paragraph 2 of the constitution.

### **10.2. Judicial hierarchy**

When the central government collapsed then the formal judicial system also ruined at the core and the matters to be worse when the country was adopted the federal system. The elasticity and ambiguity of the Provisional Constitution of Somalia (PCoS) are main features of the several challenges confronting the structure of the court system.<sup>43</sup> However this deprived access to justice for millions of citizens which undermined in ensuring the rule of law.

## **11. Application of the Rule of Law under the Current Constitution of Somalia 2012**

The term of the rule of law is nowhere defined in the Somali Constitution as mentioned above, but there is no doubt that the rule of law pervades the constitution as an underlying principle and it is seen as an integral part of good governance. The rule of law, human rights

*“There is no doubt that the rule of law pervades the constitution as an underlying principle and it is seen as an integral part of good governance*

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<sup>42</sup> Marcel Fontaine ‘Law Harmonization And Local Specificities--A Case Study: OHADA And The Law Of Contracts’ (2013) *Uniform Law Review*, Volume 18, Issue 1, Pages 50–64, <https://doi.org/10.1093/ulr/unt001>. Accessed on 6/9/2022

<sup>43</sup> Heritage Institute ‘Rebuilding Somalia’s Broken Justice System: Fixing The Politics, Policies And Procedures ‘ (2021) available at <http://www.heritageinstitute.org/wp-content/uploads/2021/01/Justice-Report-Jan-6-.pdf>. Accessed on 9/9/2022



and separation of powers are all interlinked and mutually reinforcing and they also belong to the indivisible core values and the founding principles of the federal Republic of Somalia. This was reaffirmed as per the article 3 paragraph 4 of the 2012 Somali Constitution quoting:-

*“The Constitution of the Federal Republic of Somalia promotes human rights, the rule of law, general standards of international law, justice, participatory consultative and inclusive government, and the separation of powers between the legislature, executive and an independent judiciary, in order to ensure accountability, efficiency and responsiveness to the interests of the people”.*

The federal constitution of Somalia is the fundamental institution for any understanding of the rule of law (RoL). As the supreme law of the land, constitutions contain the law that must be prevailing if the rule of law is to be achieved.

In this study, the author focused on three cardinal principles in relation to A. V. Dicey’s perception of the rule of law and in line with federal constitution of Somalia. Does the constitution of Somalia built respect for the rule of law is a crucially important question.

According to Dicey’s Book ‘*Introduction to the study of the law of the constitution*’ that; the rules of law contain three principles or it has three meanings as stated discussed below:-

### **11.1. Supremacy of law**

The first aspect indicates that absolute supremacy to the predominance of the regular law. He meant that in every situation in every action law must prevail and be followed strictly e.g., law must be above all. In the above explanation it can simply mean that whether government or private individual one should respect the law as it demands. <sup>44</sup>This even cause for government institutions to respect the law as need be. In that regard, the question is what happens if the government itself or the government officials have violated the law?

*“...that in every situation in every action law must prevail and be followed strictly*

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<sup>44</sup> A. V. Dicey, ‘Rule Of Law Compared With Droit Administratif’(1885) Palgrave Macmillan London Pages 328-405

Constitutional supremacy means that the constitution takes precedence over all other law in a particular country, for example, legislation or case law. It is important to ensure that a constitution has legal supremacy: if a government passed a law that violated the constitution – was not in accordance with or conflicted with a constitutional provision – such a law could be challenged in a court of law and could be overturned on the ground that it is ‘unconstitutional’.

Under the constitutional law if such circumstances arise then the court of law should be able to apply the basic principles of constitutional and administrative law to prevent bad or ill motive action of individuals. It can be illustrated under *Article 4 of the Constitution of Somalia* that, This Constitution is the supreme law of the land and shall have binding force all authorities and persons throughout Somalia.

Further, Dicey asserted that discretion has no place where there is supremacy of law. According to him discretion is a link to arbitrariness. Dicey says that wherever there is discretion, there is room for arbitrariness and discretionary authority on the part of the government to jeopardize the legal freedom of the people.<sup>45</sup>

The Somali Constitution is the paramount source of law in our country. The *grund-norm*, the basis of the legal system is the reason for validating the Constitution and it signifies that the Constitution is accepted by the legal system. If the law or customs and any other administrative actions that is contravenes the constitution, the court shall invalidate it or be declared null and void.<sup>46</sup>

However, many legal questions arise to the 2012 constitution of Somalia and who is responsible in perpetuating the constitution since a constitution can only attain supremacy if it is authorized by a higher power. For constitutions which are already at the apex of the legal order, this ‘higher power’ must be external to the organs created under the constitution. Example include popular acceptance via a referendum. Thus, it was not convincing in proving that Somali lacks a theoretical basis to find constitutional supremacy.<sup>47</sup>

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<sup>45</sup> Above note (no. 31)

<sup>46</sup> See, article 4 (2) of the Somali constitution

<sup>47</sup> Desmond Chye ‘Is Singapore’s Constitutional Supremacy An Illusion? (2021) *Singapore Law Review Juris Illuminae* Volume 13 available at <https://www.singaporelawreview.com>.

*“All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect shall have equal rights and duties before the law*

### **11.2. Equality before the law**

The rule of law is based on key democratic principles, such as equality before the law, accountability to the law, separation of powers and participation in decision making. The rule of law is a principle of governance anchored in participatory and consultative processes.<sup>48</sup>To be legitimate, laws should be widely consulted and reflective of society’s needs and values.

In the second meaning of the rule of law, Dicey meant that nobody is above the law. It is trite law that all people are equal before the law. Therefore, nobody should misuse or miss handle the law its self-thinking that he/she is above the law. E.g., it is illustrated under **Article 11 of the Constitution of the Federal Republic of Somalia** which states that all citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect shall have equal rights and duties before the law. This also cause all person, individual to respect the law as necessary.

Dicey also states that, there must be equality before the law or equal subjection of all classes to the ordinary law of the land. He concluded that, a special law and special courts is a threat to the principles of equality. Therefore, he is of the view that there should be the same set of laws for all the people and should be adjudicated by the same civil courts.

The expression ‘equality before law’ is found in Article 11 of the Somali Constitution. However, there is no equality before law. It is noteworthy that this concept is not absolute as we can only apply it among those who are equal and not among the unequals. For instance, the Somali laws does not permit individuals below the age of fifteen to enter into contracts. This is to protect minors from being bound by contractual obligations which they may not have the capacity to understand. The Constitution also permits the State to enact laws that apply to only certain classes of people for achieving certain reasonable objects. Hence, the rule of law does not prevent certain classes of persons.

*“The courts are the enforcer of the rule of law and hence it should be free from impartiality and external influence*

### **11.3. Predominance of the legal spirit**

The third pillar of Dicey’s concept of Rule of Law is predominance of legal spirit. According to Dicey, for the prevalence of the rule of law there should be an enforcing

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<sup>48</sup> See, article 3 paragraph 4 of the 2012 Somalian Constitution

authority and that authority he found in the courts. He believed that the courts are the enforcer of the rule of law and hence it should be free from impartiality and external influence. Independence of the judiciary is therefore an important pillar for the existence of rule of law.<sup>49</sup>

**Article 106 (1) of the Constitution** of Somalia states that the judiciary authority shall be independent from the legislative and executive branches of government whilst fulfilling its judicial functions, Members of the judiciary shall be subject only to the law.

The rule of law is based on the need to protect the rights and freedom of the individual in society from arbitrary actions of government and public officials. The courts in any country are custodians of rights because it is their duty to interpret the constitution and to determine whether the rights of individuals have been infringed. Every section of the state has a different role to play in ensuring that the rule of law is observed, and the judiciary is at the core of them all.

## 12. Conclusion

The rule of law had a negative reputation among the people of Somalis due to the nation's previous history of civil and military governments as well as two decades of civil wars where the rule of law were never adhered to and many innocent citizens became victims on domestic violence. We live in a country where we often hear talk about the rule of law, often hear about how law will help people to lives that dignifies and free. Nonetheless, the rule of law should be a political philosophy that all citizens and government institutions within the Federal Republic of Somalia are respected and accountable to the same laws including public officials, lawmakers, law enforcement officials and even judges among others.

It is also important to note that, in 1960s Somalia were politically independent and colonialism had ended, which created an imperative to shift the focus to the Somali economic developments, good governance, democracy, rule of law and integration. For example, on 1990s before Somalia was devastated by civil war the country's population were a rising steadily, illiteracy was reduced by 60%, malnutrition in the rural areas disappeared, the economy soared to the same level of the most developed African countries

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<sup>49</sup> Above note (no. 31)

and there was complete integration in religious and social-political matters between all Somali inhabitants on the horn of Africa.

### **13.Recommendations from the Review**

In light of the conclusions of this study, the following recommendations are provided. The recommendations stated herein below may not be a panacea to the problems or challenges which the rule of law in Somalia faces, but it is hoped that they will be a starting point in the quest for the rule of law.

The Somali constitution has a bill of rights and the government should make sure that the rule of law must be respected that every Somalis enjoys his or her fundamental rights. Where these have been abused or not been observed citizens have access to institutions such as the Ombudsman, or courts of laws where they can seek redress.

There is need to use an integral approach to constitution as well as accountability in order to fulfill the objectives of the rule of law and justice sectors, if justice cannot affirm through legitimate judgments or if remedies are not made available to the victims.

The government should make significant progress in reforming legal system since most laws are outdated or non-existent. The legal reforms have been extremely slow which is a serious challenge remained up-to present. Thus, undermines the rule of law in Somalia.

The basic requirement of the rule law is that the powers of the public authorities are defined by law. In so far as legality redresses the action of public officials. It also requires that they have authorization to act and that they subsequently act within the limits of the powers that have been conferred upon them, and consequently respect both procedural and substantive law.

The courts of law should be an independent from the executive and legislative or any other persons. It is necessary that rule of law are observed and adhered to not only at the national level but also in the international arena in order for peace to thrive and social and economic development to take place.

Government officers should be accountable under the law. The law should establish procedures for reviewing the actions of government officers and to sanction misconduct or

violations of the law (by commission or omission). A code of ethics should be introduced to encourage the integrity of government agents. Ethics should be one of the criteria upon which the performance of civil servants may be evaluated.

Efforts should be made to create and sustain public awareness of the provisions of the Constitution on the fundamental law of the land. This will help to educate the citizens how to defend the Constitution and the rule of law against all forms of abuse. Civic education is essential in the creation of public awareness about the law, the administration of justice and basic human rights. The public are stakeholders and beneficiaries of the Rule of Law. This would be facilitated further by the introduction of constitutional studies as an examinable subject at all educational level.

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