

RESTORING THE RULE OF LAW IN SOMALIA

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Since the collapse of the central government in Somalia in 1991 after being overthrown by rebel groups, Somalia has suffered from the absence of the rule of law and thus lack of access to justice. Many Somalis were killed in the civil war, while many others had their property, including houses, money, and lands looted.

But after the re-establishment of successive Somalia transitional governments based in Djibouti and Kenya, plans were set to restore the Rule of law in the country by re-establishing the justice institutions, including formal courts, police, custodial corps, and ministry of justice.

In 2012 when President Hassan Sheikh Mohamud was elected as Somalia President, he set six objectives to achieve in his four-year term. The first pillar was to enhance the justice institutions, and he organized a National Dialogue on Justice Reform Conference in Somalia by inviting many law scholars and justice stakeholders to develop a strategic plan aimed at restoring the Rule of Law in Somalia.

The conference objective was to advance the aspirations of the Somali people and the wishes of the various Rule of Law institutions in addressing the gaps in the justice system to ensure a justice system the average Somali citizen has confidence in. The Conference proposed some of the following recommendations:

1. To immediately start reforming the judiciary and Rule of Law institutions in accordance with the Provisional Constitution whilst bearing in mind the current situation of the country;
2. To establish the Judicial Service Commission as soon as practicably possible and in accordance with the Provisional Constitution;
3. To establish the Constitutional Court as soon as practicably possible and in accordance with the Provisional Constitution;

4. To establish the Federal Court system as soon as is practicably possible and in accordance with the Provisional Constitution and also to expand them to all regions of the country as soon as is reasonably practicable and in accordance with the Provisional Constitution;
5. To ensure that the judiciary is independent from the executive as stipulated in the Provisional Constitution;
6. To provide adequate remunerations and resources to the employees of the judiciary to meet their obligations;
7. To provide capacity building to the members of the judiciary;
8. To elevate the quality of the judiciary and Rule of Law institutions;
9. To reform the Office of the Attorney General in accordance with the Provisional Constitution and also to enhance the capacity of the staff members at the Office;
10. To reform all laws and establish a commission which shall review and reform all existing laws in a manner consistent with the Provisional Constitution and Shari'ah law;
11. The parliament shall expedite the passage of all relevant legislations that will lay the foundations for a reformed judicial system in accordance with the Provisional Constitution;
12. To incorporate human rights education into the training curriculum of the police, custodial corps and national security services.
13. To establish an effective Legal Aid system in order to enhance Access to Justice for the low income people. ⁽ⁱ⁾

Fast-forward, the process of reforming the justice system in Somalia was given priority in the government's top Agenda, and highly educated people were hired to lead the justice institutions. This was critical to serving the people and presenting fair, affordable, and free access to justice.

Also, the government formed many committees to reform the old laws after lengthy consultations with justice stakeholders in line with the international law and Somali constitution.

During the tenure of the incumbent president Mohamed Abdullahi Farmajo, the justice stakeholders in the country signed an agreement in Jowhar to adopt a new justice and correction model for Somalia in Feb 2017 that comply with the Federal provisional constitution.

The accord provides a framework within which the federal and state-level governments can support the rebuilding of the Horn of Africa country's justice and corrections system – critical institutions which were destroyed during its civil war. The event was attended by Federal Justice Minister Hassan Hussein Haji and all of the country's state ministers of justice. ROLSIG and the UN Development Programme (UNDP) provided technical support for the development of the framework. The political agreement, which is considered an important aspect of Somalia's state-building and federalization process, is the culmination of two years of technical consultations and negotiations between the Federal Government and Federal Member States. ⁽ⁱⁱ⁾.

But the Agreement wasn't adopted by the National Security Council due to the political differences between the federal Government and Federal Member State leaders.

Despite that, the judiciary leaders appointed by president Farmajo made efforts to reform the judiciary. And they managed to re-shape the judiciary structure in Mogadishu by installing a new generation of judges and prosecutors free from corruption and nepotism.

For their part, the federal Member States have established formal justice institutions consistent with the provisional Federal Constitution, to deliver fair and fair access to justice to the people. United Nations organizations in Somalia are currently assisting the Somalia authorities to restore the Rule of Law by supporting the justice institutions. For example, UNDP implements a rule of law project in the country to assist Somalia to establish independent, accountable and efficient justice institutions capable of addressing the justice needs of the people of Somalia. The six projects and programmes under the UNDP Rule of Law and Security portfolio are housed within the UN joint Framework for Rule of Law (JFROL) and contribute to the implementation of the UN Strategic Framework for Somalia (UNSF). They frame UN support to Somalia's security, political and development priorities over the coming 2 years. The support to rule of law is reflected under Priority 2 of the UNSF which is that 'All Somalis benefit from Peace, Security, Justice & the Rule of Law ⁽ⁱⁱⁱ⁾.

Recently, the attempts to restore the Rule of Law in Somalia have been on the right path, and citizens started to have confidence and trust in the justice institutions, yet, many challenges are facing the restoration of Rule of Law in the country, including political stalemates between the FGS and FMS, failure of completing the constitution to clarify the FGS and FMS judiciary institutions jurisdictions, lack of competent personals, lack of capacity building and materials needed for the justice institutions, absence of harmonized legal code, judicial structure, monitoring mechanisms, as long Somalia shifted from Unitary system to Federal system and independent financing for justice institutions.

However, Somalia needs to develop an acceptable modified state model of the rule of law culture as a template to operate on and helps the country negotiates its civil and political affairs based on the existence of strong state institutions to ensure the rule of law culture. Adherence to the rule of law culture will strengthen the current weak state structure and remove contradicting laws that are highly confusing and contentious. ^(iv)

Finally, the task of restoring the rule of law in Somalia requires wide-reaching cooperation involving all stakeholders to strengthen the justice institutions, adopting the Justice and correction model to rebuild the justice institutions in the country, reform and harmonize the existing laws in a manner consistent with the Provisional Constitution, and promote the Rule of Law culture in Somalia.

ENDNOTES

ⁱ Available at <http://hrlibrary.umn.edu/research/somalia-Communique-National%20Dialogue-eng.pdf>

ⁱⁱ Available at <https://unsom.unmissions.org/somalia%E2%80%99s-federal-and-state-governments-reach-agreement-new-justice-and-corrections-framework>

ⁱⁱⁱ Available at <https://www.so.undp.org/content/somalia/en/home/democratic-governance-and-peacebuilding/rule-of-law.html>

^{iv} Available at <https://medium.com/@mohamedshuayb/towards-a-culture-of-rule-of-law-7ef45f3188bf>