

Bayreuth, 24.04.2023

**Office of the United Nations High Commissioner for Human Rights
Independent Expert on Somalia****Submission to the call for contributions on the situation of human rights in Somalia – 2022****Introduction**

The Chair of African Legal Studies at the University of Bayreuth, with Prof. Dr Thoko Kaime as Chairholder, holds a special place across all German Law Schools as it is the only Chair to focus exclusively on the study of African legal systems. One of the Chair's key areas of research and teaching are legal and constitutional developments on the African continent. In this context, the Chair of African Legal Studies has special expertise on Somalia due to the initiation of productive collaboration in teaching and research activities with SIMAD University in Mogadishu in Somalia. The institution has made it a priority to empower young people in all situations of life, especially women. In the endeavours to strengthen this special cooperation, team members of the Chair of African Legal Studies visited Somalia twice in 2022 and a visit to Germany by a Delegation of SIMAD University is planned for June 2023. Furthermore, the Chair of African Legal Studies has established a strong connection to actors in the Government of Somalia and has signed a Memorandum of Understanding (MoU) with the Ministry of Justice and Constitutional Affairs in September 2022 to support the upcoming constitutional review of Somalia's current provisional Constitution led by the new president Hassan Sheikh Mohamoud. In light of this, we welcomed the official delegation of the Federal Republic of Somalia represented by the Member of Parliament Abdirahman Abdishakur, Special Envoy for Humanitarian & Drought Response, Senior Humanitarian Advisor Ayan Harare, and Senior Diaspora Engagement Advisor Abdihakim Ali in October 2022 in Germany. The visit as such and the discussion on the topic "Anchoring Disaster Prevention in Constitutional Texts" laid the foundation for a successful cooperation between the Chair of African Legal Studies and the Government of the Federal Republic of Somalia. Additionally, the Chair has managed to launch the Asli Ahmed Award on the africanlegalstudies.blog (<https://africanlegalstudies.blog/>) which rewards outstanding contributions from Somali scholars and students around legal, political and societal developments in the Federal Republic of Somalia.

I. Political developments since July 2022**1. Political stability**

Since July 2022, the political stability of the country has improved significantly. The government, led by Prime Minister Hamza Abdi Barre, has been productive in legislation, while maintaining a harmonious relationship

**Prof. Dr. Thoko Kaime**Chair of African Legal Studies, B IX, Room No. 42, Universitätsstr. 30, 95447 Bayreuth,
0921 55-4336, Thoko.Kaime@uni-bayreuth.de
www.africanlegalstudies.uni-bayreuth.de

with the two parliamentary chambers. In addition, the Presidency has taken significant steps to improve relations with neighbouring countries. Notably, the establishment of the National Consultative Council (NCC), comprising prominent representatives from federal and regional states, has been a crucial development in setting comprehensive guidelines for the federal states. As a result, most policy stakeholders are adhering to the NCC's recommendations, marking a significant improvement over previous years. Furthermore, due to the extension of legislative periods in the federal states, political stability is expected to continue for the next 12-24 months. Finally, in a promising move, the Mogadishu government has taken proactive measures to de-escalate tensions in the conflict over Laascaanood in the Sool region of Somaliland, adopting an inclusive and constructive approach. At present, however, it is not foreseeable how the conflict will develop.

2. Governmental ambition

The government's primary focus is on maintaining security, given the ongoing war against Al Shabab that has engulfed almost the entire state. This conflict has led to a significant drain on resources, personnel, and attention. However, the government has made considerable progress, recapturing over 60% of Al Shabab's sphere of influence in the initial phase. In 2023, the government anticipates more intense conflicts with the alliance of government troops, clan militias, international actors, and contingents from neighbouring states. Nonetheless, the federal government has demonstrated its willingness and ability to lead the fight against Al Shabab with greater military, religious, and economic resolution than in recent years.

3. Remaining challenges

Despite the positive developments in the security situation, the number of attacks¹ is raising. Al Shabab typically targets politicians, police officers, government officials, and individuals affiliated with NGOs and international organisations. While the group does not intentionally target civilians, their attacks often result in civilian casualties, making them indirect condoned victims. In 2022, Somalia witnessed the highest number of civilian casualties since 2017, with a 60% increase compared to the previous year.² Furthermore, Al Shabab has caused extensive damage to Somalia's infrastructure, including the destruction of 11 schools, telecommunication antennas, and part of the Shabelle riverbank.³ Al Shabab's activities extend beyond Somalia's borders, with neighbouring countries equally concerned about the group's use of commercial drones for surveillance and attacks.⁴

VI. Rule of law, accountability and transitional justice

b) The constitutional review process

¹ <https://acleddata.com/2023/03/03/context-assessment-heightened-political-violence-in-somalia/> accessed 27 March 2023.

² <https://press.un.org/en/2023/sc15208.doc.htm> accessed 27 March 2023.

³ <https://www.ohchr.org/en/press-releases/2022/11/somalia-turk-decries-steep-rise-civilian-casualties-amid-surge-al-shabaab> accessed 15 April 2023.

⁴ <https://press.un.org/en/2023/sc15208.doc.htm> accessed on 22 April 2023.



Although Somalia's provisional Constitution has been in effect since 2012 and outlines the fundamental framework of the state and its institutions, there has been no progress in completing the Constitution. One significant flaw of the provisional Constitution is the absence of a clear delineation of powers and responsibilities between the federal government and the federal states. In view of these challenges, the new Presidency under Hassan Sheikh Mohamoud has set out to initiate a constitutional review to address the current weaknesses of the Constitution.⁵

The Chair of African Legal Studies has been actively engaged with key actors in the constitutional review process since spring 2022. The new Presidency has expressed a strong commitment to completing the review within the current legislative period. The NCC has emerged as a politically significant platform for achieving this goal, which not only secures the consent of the federal states but is also an expression of the new respect for the system of federalism. In December 2022, the NCC passed far-reaching resolutions on the distribution of competences. Even though Puntland has not formally signed up to these resolutions, Puntland's further actions, such as the setting up of a large expert commission to review the constitution, and corresponding press announcements, have indicated its willingness to accompany the process. At the March 2023 NCC meeting, the first basic guidelines for financial federalism were agreed upon, providing planning security for the federal states and resolving a longstanding point of contention. The constitutional review process can therefore be seen as very positive on the part of the Somali government and the presidency. The House of People, the Upper House and the federal states have also established parliamentary commissions/committees of experts to accompany this process.

The Somali government has expressed a clear desire for international support in the ongoing constitutional process, and now is the opportune moment for the international community to provide such assistance. While some individual partners have made announcements of support, there is currently a lack of concrete commitment to aid the constitutional process. However, given the political momentum currently present in Somalia, this is a unique opportunity that should not be missed. It has been over a decade since Somalia has seen this kind of political will, making it all the more important for the international community to step up and provide meaningful support.

The Chair of African Legal Studies at the University of Bayreuth has taken steps to implement a project that supports the constitutional process in Somalia. Working in partnership with the Ministry of Justice and Constitutional Affairs, the project includes the development of a legal framework on federalism and safeguarding laws, such as revisions to the electoral law and the creation of a Federal Constitutional Court Act. The overall aim is to create a Constitution that is widely accepted by the Somali population, including political

⁵ <https://www.csis.org/analysis/strengthening-somalias-security-conversation-he-president-hassan-sheikh-mohamud> accessed 15 April 2023.

actors and civil society, and to agree on a joint path towards its implementation by the end of the 2026 legislative period.

To ensure broad societal participation in this process, the Chair of African Legal Studies has proposed a Constitutional Dialogue as a new and unique approach for Somalia. This dialogue will complement the technical and scientific legal work by fostering societal discussion to guide and shape the frameworks and structures of the Constitution. The inclusion of Somali society in this process is the core of the approach and sets it apart from previous attempts to achieve greater legitimacy and recognition from the masses. This important aspect of the project is referred to as the "Somalisation" of the Constitution.

— Despite strong political will to complete the Constitution, there are still significant legal hurdles to overcome. The provisional Constitution is largely modeled on Western norms and deviates greatly from the needs and traditions of Somalia, especially with regard to fundamental judicial rights and the legal system. Although Sharia is mentioned as standard for legislature, the statutory legal system is governed and dominated by the state. Traditional law (Xeer) is not recognized as a source of law at all. Thus, although the Constitution meets possible donor expectations, the experience of the last eleven years has shown that no rule of law can be made against the will of the population. Accessing justice is a significant challenge in Somalia as the state guarantees it in the Constitution, yet it lacks the capacity to provide it. Equally, the state denies the legitimacy of alternative dispute resolution mechanisms, despite the fact that the majority of Somalis rely on these mechanisms to access justice.

— Current Rule of Law/State Building initiatives operate in this contradiction. While they support executive actors, they do not create civil society or parliamentary balances. The police and military have an outsized presence in Somalia, which is partly due to the fragile security situation. However, this has resulted in frequent abuses of power, corruption, and the formation of autocratic structures, as was especially evident during the period from 2017 to 2021. In this regard, the government's intention to ban heavy weapons and paramilitary escorts of government officials and businessmen in the urban landscape of Mogadishu is a welcome development.

— Freedom of the press and freedom of assembly have made no substantial progress in recent years. The shooting of peaceful demonstrators in Mogadishu in January 2021 and numerous arrests and assassinations of journalists over the past decade demonstrate the precariousness of these rights. While Al Shabab propaganda has been spread under the guise of freedom of the press, legislative improvements are urgently needed to protect these fundamental rights.⁶ More broadly, the practical enforcement of human rights enshrined in the Constitution is limited by a lack of administrative capacity, with the fight against Al Shabab taking priority over safeguarding individual liberties. The situation in the prison system is particularly alarming,

⁶ VII. Freedom of opinion and expression

despite the construction of new prisons. Overcrowding, poor hygienic conditions, and restricted access to family and legal aid continue to affect inmates.⁷

The representatives of ATMIS (formerly AMISOM) play a crucial role in upholding the principle of equality before the law. However, reports of attacks, robberies, threats, and even sexual offenses against residents continue to raise concerns.

c) Examples and results of participatory and people centered transitional justice processes, including specific measures to ensure full, effective and equal participation of women and girls, increase their role in decision-making, and contribute to their empowerment

Although positive examples on participatory and people centered transitional justice processes are scarce, there are some initiatives that strive to improve access to justice for vulnerable groups in Somalia. For instance, SIMAD University and Puntland State University operate law clinics that specifically offer support and expertise to these groups. However, Sharia and Xeer law continue to play a significant role in everyday legal matters. In fact, according to surveys conducted by the EAJ⁸, state police departments often refer to traditional procedural channels even in cases of everyday crime. In some areas such as Baidoa and Mogadishu, alternative dispute resolution centers exist, which offer a secure and unbiased space for dispute resolution, but they tend to favor traditional and community-based methods over state procedures. It is crucial to provide further support for such initiatives that promote and enhance community-based dispute resolution while ensuring that legal procedures are fair and effective.

h) Measures to address the challenges above.

Somalia is currently experiencing a positive shift in politics, and it is crucial to seize this opportunity to drive progress forward. Completing the constitutional review process would not only mark an end to the prolonged period of insecurity since 1991, but also enable the government to focus on institution building and improving the living conditions in the recently liberated areas, especially in terms of economic opportunities and access to justice. It is important to address the lack of resources, acceptance, and transparency in state law, which has led to many turning to traditional or community-based dispute resolution methods.

Furthermore, it is crucial to promote inclusivity and diversity in decision-making processes, including the inclusion of women, youth, and marginalized groups. This can be achieved through affirmative action policies, such as quotas and targeted outreach programs, as well as through creating a culture of openness and dialogue where different perspectives are heard and valued. Overall, addressing the challenges facing Somalia requires a sustained commitment from the government and the international community to build a more prosperous and peaceful future for all Somalis.

⁷ VI. Rule of law d) Rights of persons in detention

⁸ https://www.eajprogram.org/research/AJAT_SOM_Brief.pdf.