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Executive Dominance and Judicial Subordination in Somalia: Institutional Pathways to Power without Accountability

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Abstract

Somalia illustrates a persistent gap between formal constitutional commitments to judicial independence and the institutional conditions in which courts operate. The paper argues that executive influence is best understood as structured judicial subordination, the interaction of appointment, fiscal, prosecutorial and constitutional-review arrangements that can reproduce judicial dependence despite formal guarantees of independence. Using doctrinal analysis supported by institutional and comparative analysis, the paper traces this pattern from the 1969 military takeover through post-1991 reconstruction and the constitutional changes of 2024 and 2026. It compares selected safeguards in Kenya and Uganda to identify institutional choices relevant to Somalia. The paper's central contribution is a framework for analysing judicial dependence through four interacting dimensions: appointments, finance, prosecution and constitutional review. It concludes that reform requires transparent merit-based appointments, protected judicial financing, prosecutorial safeguards and effective constitutional adjudication.

Keywords: Judicial independence, executive dominance, judicial Service Commission, Somalia, constitutionalism, judicial accountability

Introduction

The relationship between executive authority and the administration of justice in Somalia has repeatedly departed from the constitutional ideal of separated and mutually checking institutions.[1] Since independence, Somalia has experienced civilian government, military rule, state collapse, transitional institutions and federal reconstruction.[2] Across these different arrangements, the formal language of judicial independence has often been stronger than the institutional safeguards supporting it. The result is not simply an under-resourced court system. It is a recurring configuration in which the actors who are expected to be restrained by courts retain substantial influence over the personnel, resources or institutional conditions on which judicial action depends. The historical roots of this configuration are particularly visible after the military coup of 21 October 1969.[3] The Supreme Revolutionary Council suspended the constitutional order and concentrated legislative, executive and judicial authority in the new ruling structure. The subsequent restructuring of the courts, including the use of security tribunals, weakened the institutional separation that had existed under the 1960 Constitution.[4] The significance of this period for the present article is not that contemporary Somalia simply reproduces military rule. Rather, it is that the period established an institutional memory in which courts could be treated as instruments of political authority rather than as autonomous constitutional actors.

The collapse of the state in 1991 produced a different form of judicial vulnerability.[5] The destruction and dispersal of formal institutions, court infrastructure and professional personnel made the later reconstruction of an independent judiciary unusually difficult. Informal dispute-resolution mechanisms continued to operate, while formal courts were rebuilt unevenly and under conditions of political fragmentation.[6] This history matters because institutional independence requires more than constitutional text: it also requires professional continuity, credible appointment procedures, resources and public confidence in adjudication. The 2012 Provisional Federal Constitution attempted to establish those safeguards. It expressly recognised judicial independence, created a Judicial Service Commission (JSC), provided for a Constitutional Court and allocated judicial authority to the courts.[7] Yet the implementation record has remained incomplete. The JSC was repeatedly constituted and contested, and the Ministry of Justice and Constitutional Affairs continues to identify establishment or operationalisation of the JSC and Constitutional Court as central justice-sector reform priorities.[8] The gap between institutional design and institutional operation therefore remains a defining feature of the Somali justice system. The constitutional changes of 2024 and the constitutional transition of 2026 have added a further

[1] K Menkhaus, 'Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping' (2006–07) 31(3) International Security 74, 76; Human Rights Watch, World Report 1990: Somalia (Human Rights Watch 1991), available at: https://www.refworld.org/reference/annualreport/hrw/1991/en/23790 (last accessed 28 May 2026).
[2] *Ibid*
[3] There Was No Choice: Siad Barre Makes His First Speech After the 1969 Coup' (Socialist Somalia Archive, 21 January 2024), available at: <https://somaliarchive77.substack.com/p/there-was-no-choice-siad-barre-makes> (last accessed 28 May 2026); Human Rights Watch, World Report 1990: Somalia (Human Rights Watch 1991), available at: https://www.refworld.org/reference/annualreport/hrw/1991/en/23790 (last accessed 28 May 2026).
[4] ibid
[5] Andre Le Sage, Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives (Centre for Humanitarian Dialogue 2005), 14–16; Centre for Justice and Accountability, The Heritage of War and State Collapse in Somalia and Somaliland (CJA 2010), 116.
[6] Centre for Humanitarian Dialogue, Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives (Centre for Humanitarian Dialogue 2005).;Centre for Justice and Accountability, The Heritage of War and State Collapse in Somalia and Somaliland (CJA 2010).
[7] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 106, 109A and 109B, available at: https://parliament.gov.so/wp-content/uploads/2024/12/Provisional-Constitution-2012.pdf (last accessed 28 May 2026); Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).
[8] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 106, 109A and 109B, available at: https://parliament.gov.so/wp-content/uploads/2024/12/Provisional-Constitution-2012.pdf (last accessed 28 May 2026).;Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).

layer to this problem. In March 2024, Parliament approved changes that strengthened the presidency, introduced direct elections and altered the relationship between the President and Prime Minister.[9] The changes were contested by Puntland and other political actors, who questioned both the process and the distribution of powers. In March 2026, the federal authorities announced the adoption of a new constitution, while the Ministry of Justice continued to describe constitutional finalisation as an ongoing priority.[10] These divergent official positions illustrate why the present constitutional moment should be treated analytically as a contested transition rather than assumed to have settled every question of constitutional authority. Against this background, the paper asks, to what extent is executive influence over the administration of justice in Somalia structurally reproduced through constitutional and institutional arrangements? It addresses three subsidiary questions. First, how has executive influence over judicial institutions developed historically? Second, which appointment, prosecutorial, fiscal and constitutional-review arrangements enable judicial dependence? Third, what institutional safeguards can be drawn from comparable African systems without assuming that models developed elsewhere can simply be transplanted into Somalia?

The paper makes two related contributions. First, it develops the concept of structured judicial subordination. The concept refers to a condition in which formal guarantees of judicial independence coexist with institutional arrangements that make the judiciary materially or procedurally dependent on actors whose conduct it may be required to review.[11] Secondly, it proposes an analytical model based on four interacting dimensions: control over judicial appointments, control or vulnerability in judicial financing, executive influence over prosecution and case selection, and the absence or weakness of authoritative constitutional review. The argument is that these dimensions should be analysed together. A judiciary may survive one weak safeguard if the others remain robust, but the accumulation of vulnerabilities can convert formal independence into practical dependence.[12]

Methodology

The paper adopts a doctrinal legal methodology as its principal method. It examines constitutional provisions, legislation and other primary legal materials governing judicial authority, judicial appointments and separation of powers.[13] The analysis is supplemented by institutional evidence from official Somali justice-sector documents and carefully selected secondary materials, including peer-reviewed scholarship, international organisation reports and authoritative legal databases. The purpose of the institutional material is not to substitute political reporting for legal analysis, but to test whether constitutional safeguards operate in practice as the legal framework assumes. The comparative component is deliberately limited. Kenya and Uganda are used as comparator jurisdictions because both operate constitutional systems in which judicial service commissions, judicial appointment procedures and financial

[9] ACLED, 'Dispute Over Constitutional Amendment and Increased Al-Shabaab Attacks: Somalia April 2024' (26 April 2024), available at: https://acleddata.com/update/dispute-over-constitutional-amendment-and-increased-al-shabaab-attacks-somalia-april-2024 (last accessed 28 May 2026).;Office of the President, Federal Republic of Somalia, public announcement concerning the adoption of the Constitution, 4–8 March 2026.;Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, public constitutional materials, July 2026.

[10] Office of the Prime Minister, Federal Republic of Somalia, 'Constitutional Amendments Approved by Parliament' (March 2024); ACLED, 'Dispute Over Constitutional Amendment and Increased Al-Shabaab Attacks: Somalia April 2024' (26 April 2024), available at: https://acleddata.com/update/dispute-over-constitutional-amendment-and-increased-al-shabaab-attacks-somalia-april-2024 (last accessed 28 May 2026).

[11] For the conceptual distinction between formal guarantees and institutional conditions, see UN Basic Principles on the Independence of the Judiciary (adopted 6 September 1985, endorsed by GA Res 40/32 and 40/146), paras 1 and 7.

[12] UN Basic Principles on the Independence of the Judiciary (adopted 6 September 1985, endorsed by GA Res 40/32 and 40/146), paras 1 and 7; Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 106 and 109A

[13] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 106, 109A–109C.;Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).

safeguards are more institutionally developed than in Somalia.[14] The comparison does not claim that either system is free from executive influence. Instead, it isolates specific design features particularly transparent appointment mechanisms, parliamentary involvement and protected or self-accounting judicial finance that demonstrate how constitutional independence can be supported by institutional architecture.[15]

The paper uses the term structured judicial subordination rather than judicial capture to avoid implying that every instance of institutional weakness is the result of a single coordinated plan.[16] 'Capture' can suggest an identifiable moment of takeover or a unified political strategy. Somalia's experience is more fragmented. Executive influence may arise through appointment practices, fiscal dependency, political bargaining, institutional vacancies and weak constitutional enforcement. These mechanisms can produce a similar effect without requiring proof that every relevant actor acted pursuant to a single design. The concept therefore focuses on the structure and cumulative effect of institutional relationships.

Historical genealogy of executive influence over the judiciary

Somalia's first constitutional order did not establish a fully insulated judiciary, although it formally recognised judicial authority as distinct from the other branches. The 1960 Constitution allocated judicial functions to the courts, while the Organisation of the Judiciary Law 1962 provided a structured court system and a Higher Judicial Council.[17] The institutional weakness was that executive authority remained present in the governance of the judiciary. This did not make the pre-1969 system equivalent to the later military regime, but it created a vulnerability: judicial administration was not entirely separated from political authority.

The 1969 coup transformed that vulnerability into an explicit concentration of power. Law No 1 of 1969 vested legislative, executive and judicial authority in the Supreme Revolutionary Council.[18] Decree No 12 abolished the Supreme Court and Constitutional Court and restricted the jurisdiction of the remaining courts. The National Security Court operated under military authority and could assume jurisdiction over cases pending in other courts. In institutional terms, the issue was therefore not merely that the executive influenced the judiciary. The distinction between executive and judicial power was itself substantially collapsed. The 1979 Constitution restored formal judicial institutions but did not remove executive dominance. The President remained central to the Higher Judicial Council, including its role in appointments and disciplinary matters.[19] The lesson is important for the present analysis: constitutional restoration does not necessarily produce institutional independence. A constitution can recreate the name and formal structure of a judicial council while leaving the incentives and lines of authority that permit political control substantially intact.[20]The post-1991 period produced a different institutional problem. The collapse of

[14] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 106, 109A and 109B.;Constitution of Kenya 2010, arts 160–173; Constitution of the Republic of Uganda 1995, arts 128, 142 and 146–147.
[15] Constitution of Kenya 2010, arts 171–173, available at: <https://new.kenyalaw.org/akn/ke/act/2010/constitution/eng@2010-09-03> (last accessed 28 May 2026).;Constitution of the Republic of Uganda 1995, arts 128, 142, 146 and 147, available at: https://ulii.org/en/akn/ug/act/statute/1995/constitution/eng@2023-12-31 (last accessed 28 May 2026).
[16] See also Africa Center for Strategic Studies, 'Regime Capture of the Courts in Africa' (27 February 2024), available at: https://africacenter.org/spotlight/regime-capture-courts-africa/ (last accessed 28 May 2026).
[17] Constitution of the Somali Republic 1960; Organisation of the Judiciary Law 1962.
[18] Law No 1 of 1969; Decree No 12 of 1969; Human Rights Watch, World Report 1990: Somalia (Human Rights Watch 1991), available at: https://www.refworld.org/reference/annualreport/hrw/1991/en/23790 (last accessed 28 May 2026).
[19] Constitution of the Somali Democratic Republic 1979, provisions governing the Higher Judicial Council and judicial appointments.
[20] Constitution of the Somali Democratic Republic 1979, arts 105–106; Adan Mohamed Omar Ali, 'Judicial Independence in Somalia' (2024) 12(2) Global Journal of Politics and Law Research 1, 4.

central government dismantled much of the formal justice infrastructure, while customary and religious mechanisms remained important in dispute resolution.[21] The resulting pluralism is not inherently inconsistent with the rule of law, but it makes the credibility of formal courts particularly important. Where formal courts are weak, citizens may rely on alternative forums, where formal courts are perceived as politically dependent, their capacity to provide neutral remedies is further diminished.

The reconstruction period therefore inherited two legacies, a history of executive interference and a period of institutional destruction. The 2012 constitutional settlement attempted to respond to both. Its significance lies in the fact that it did not merely declare judicial independence, it also created institutional mechanisms intended to make independence operational, including the JSC and Constitutional Court.[22] The continuing weakness of those mechanisms is consequently central to understanding the present accountability deficit.[23]

Constitutional architecture and the separation-of-powers crisis

The 2012 Provisional Federal Constitution provides a relatively detailed framework for judicial independence. Article 106 states that the judiciary is independent of the legislative and executive branches in the exercise of judicial functions. The Constitution also establishes the JSC under article 109A and provides for a Constitutional Court within the judicial structure. Article 90(j) places presidential judicial appointments within a recommendation structure involving the JSC.[24] On paper, these provisions create multiple points at which unilateral executive control should be restrained. The difficulty is institutional implementation. A constitutional provision can allocate authority without creating the practical conditions necessary for its exercise. Somalia's own recent justice-sector planning documents identify the establishment or operationalisation of the JSC and Constitutional Court as outstanding institutional priorities.[25] The 2025–2029 National Transformation Plan describes inadequate judicial independence, fragmented legal frameworks and the absence of core institutions as systemic justice-sector problems.[26] These official assessments are significant because they confirm that the institutional gaps identified in academic commentary are also recognised by the state itself.

The absence of an effective Constitutional Court has consequences beyond the judiciary. In a federal system, constitutional adjudication provides a legal forum for disputes concerning the distribution of authority between the federal government and federal member states.[27] It also provides a mechanism through which the legality of constitutional amendments and executive action can be tested.[28] Where no such forum is effectively available, constitutional disagreement is more likely to become a political contest in which bargaining, institutional

[21] K Menkhaus, 'Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping' (2006–07) 31(3) International Security 74; Centre for Humanitarian Dialogue, Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives (Centre for Humanitarian Dialogue 2005).
[22] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 106, 109A and 109B.
[23] UN Peacemaker, A Review of the System of Government and Separation of Powers of the Provisional Constitution (UN Peacemaker 2012), available at: https://peacemaker.un.org/en/documents/review-system-government-and-separation-powers-provisional-constitution(last accessed 28 May 2026).
[24] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 90(j), 106, 109A and 109B.
[25] Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).
[26] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 106 and 109B–109C; Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).
[27] UN Peacemaker, A Review of the System of Government and Separation of Powers of the Provisional Constitution (UN Peacemaker 2012), available at: https://peacemaker.un.org/en/documents/review-system-government-and-separation-powers-provisional-constitution(last accessed 28 May 2026).
[28] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 90(j), 106, 109A and 109B–109C.

pressure or force substitute for adjudication. The 2024 amendments illustrate this problem. The Office of the Prime Minister describes the March 2024 amendments as introducing direct universal suffrage, a multi-party system, five-year terms and stronger presidential authority over the appointment and dismissal of the Prime Minister.[29] Puntland rejected the changes and withdrew from the federal system pending a constitution approved through a referendum. Reuters similarly reported that the dispute centred on the concentration of executive power and the absence of a nationwide referendum accepted by Puntland.[30] The legal significance of the dispute is not that one political position must automatically be accepted. It is that a constitutional order without an effective neutral arbiter has difficulty converting disagreement over constitutional validity into a legal determination.

The events of 2026 make the need for institutional caution even clearer. The Office of the President states that Parliament approved a new Constitution on 4 March 2026 and that the President signed it on 8 March.[31] By contrast, the Ministry of Justice's public materials continued in July 2026 to refer to finalising the Provisional Constitution. These official statements are not easily reconciled. Rather than treating either statement as conclusively resolving the legal status of the constitutional transition, this article treats 2026 as a contested constitutional phase and limits its claims to institutional developments that can be independently supported. That approach is particularly important in legal scholarship, where the status of a constitutional text is itself part of the question under examination. This constitutional uncertainty reinforces the article's central claim. Judicial independence cannot depend solely on the existence of constitutional language.[32] It requires an institution capable of authoritatively interpreting that language, a professional mechanism for selecting judges, and a financing structure that permits courts to operate without negotiating their basic survival with the political branch they may need to scrutinise.[33]

Mechanisms of structured judicial subordination

Four mechanisms are particularly important, judicial appointments and the JSC, executive influence over prosecution and case selection, fiscal dependence, and the availability of effective constitutional review. The first three are examined in this section, while constitutional review is addressed in the above section. They are analytically distinct but mutually reinforcing. Appointment affects who enters the judiciary, finance affects the institution's capacity to operate, prosecution affects which disputes and political actors reach the courts, and constitutional review determines whether the other branches can be restrained when they exceed their legal authority. Together, these mechanisms create the conditions for structured judicial subordination.[34]

[29] Office of the Prime Minister, Federal Republic of Somalia, 'Constitutional Amendments Approved by Parliament' (March 2024); ACLED, 'Dispute

[30] ACLED, 'Dispute Over Constitutional Amendment and Increased Al-Shabaab Attacks: Somalia April 2024' (26 April 2024), available at: https://acleddata.com/update/dispute-over-constitutional-amendment-and-increased-al-shabaab-attacks-somalia-april-2024(last accessed 28 May 2026).

[31] Office of the President, Federal Republic of Somalia, public announcement concerning the adoption of the Constitution, 4–8 March 2026; Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, public constitutional materials, July 2026.

[32] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 106 and 109B–109C.

[33] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 106 and 109B–109C; Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).

[34] Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 106, 109A and 109B–109C; UN Basic Principles on the Independence of the Judiciary (adopted 6 September 1985, endorsed by GA Res 40/32 and 40/146), paras 1–7.

i. The Judicial Service Commission: constitutional mandate without institutional security

Article 109A of the 2012 Constitution establishes the JSC and gives it responsibility for important aspects of judicial administration, including appointment, discipline and transfer of federal judicial personnel.[35] The design is significant because it places a professional and institutional body between political appointment power and the individual judge. Yet the commission's own composition contains potential vulnerabilities: some members are drawn from institutions whose establishment has itself been incomplete, while others are proposed or appointed through political institutions. Recent scholarship confirms that the JSC has repeatedly failed to become a stable institution. Ali's 2024 study concluded that Somalia did not have a functioning JSC and recommended its establishment as a central judicial-independence reform.[36] A 2026 study by Bashir Yusuf Adan similarly identifies federalisation, constitutional uncertainty and political disagreement as major impediments to operationalising the commission.[37] The Ministry of Justice's 2025–2029 national planning documents independently identify establishment of the JSC as a continuing reform priority.[38] Taken together, these sources support a cautious conclusion, the problem is not simply that the JSC is poorly performing, the institutional arrangement needed to mediate judicial appointments has remained unstable.

The consequence is greater presidential discretion than the constitutional architecture appears to contemplate.[39] The correct legal criticism, however, should be framed carefully. The evidence establishes institutional weakness and the resulting risk of executive influence, it does not by itself establish that every failure to constitute the JSC was deliberately engineered by a single executive actor.[40] This distinction strengthens the argument because it separates demonstrable institutional effects from claims about subjective political intent.

ii. Judicial appointments, merit and political representation

Judicial appointments are the first point at which formal independence can be converted into practical dependence. A judge who owes appointment, promotion or continued office to a political patron operates under a different set of incentives from a judge selected through transparent, professional and reviewable criteria. The concern is not that every politically appointed judge will decide cases improperly. It is that a political appointment system increases the opportunity for improper influence and reduces public confidence in impartial adjudication. Available evidence indicates that clan and political affiliation affect public appointments and the administration of justice in Somalia. The United States Department of State has reported that clan dynamics influence judicial appointments and that the formal justice system remains subject to political and corruption-related pressures.[41] Earlier

[35]Provisional Federal Constitution of the Federal Republic of Somalia 2012, art 109A.
[36]AMO Ali, 'Judicial Independence in Somalia' (2024) 12(2) Global Journal of Politics and Law Research 1, 8; BY Adan, 'Impediments to Establishing Somalia's Judicial Service Commission: Challenges and Future Prospects' (2026) 5(1) International Journal of Law Policy and Governance 42, 44.
[37] BY Adan, 'Impediments to Establishing Somalia's Judicial Service Commission: Challenges and Future Prospects' (2026) 5(1) International Journal of Law Policy and Governance 42, 44–51.
[38]AMO Ali, 'Judicial Independence in Somalia' (2024) 12(2) Global Journal of Politics and Law Research 1; BY Adan, 'Impediments to Establishing Somalia's Judicial Service Commission: Challenges and Future Prospects' (2026) 5(1) International Journal of Law Policy and Governance 42; Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).
[39]Provisional Federal Constitution of the Federal Republic of Somalia 2012, art 109A.
[40]United States Department of State, 2023 Country Reports on Human Rights Practices: Somalia (US Department of State 2024), available at: https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/somalia(last accessed 28 May 2026); Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).
[41]United States Department of State, 2023 Country Reports on Human Rights Practices: Somalia (US Department of State 2024), available at: https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/somalia(last accessed 28 May 2026).

reporting similarly described courts as vulnerable to clan-based influence and corruption.[42] These sources should not be read to mean that clan identity determines every judicial appointment. The more defensible proposition is that the absence of consistently transparent, merit-based procedures leaves space for political and clan bargaining to shape appointments.

This distinction also matters for reform. A blanket prohibition on any Somali judge having a clan identity would be both unrealistic and conceptually misplaced. The relevant legal principle is that clan affiliation should not operate as a criterion for allocating judicial office. A professional judiciary can reflect the social diversity of Somalia without becoming a system of clan representation. Representation and independence must therefore be distinguished: diversity can enhance legitimacy, while quota-based allocation of adjudicative power can undermine the neutrality that adjudication requires.

iii. Prosecution and executive influence

Judicial independence cannot be assessed in isolation from prosecution. In criminal justice systems, prosecutors determine which allegations are investigated, which cases are charged and which matters proceed to court. If prosecutorial discretion is politically dependent, judicial independence may be weakened indirectly because courts receive a politically filtered selection of cases. The issue is therefore one of institutional complementarity, independent judges cannot fully compensate for a prosecution service that is structurally vulnerable to political direction.[43]The Somali justice system faces precisely this risk in a wider environment of institutional fragility. The United States Department of State has reported selective enforcement, interference in judicial processes and impunity concerns, while the Ministry of Justice's planning documents identify institutional weakness and limited independence as systemic justice-sector problems.[44] The evidence supports concern about executive influence, but claims of systematic political prosecution should be tied to documented examples rather than stated as an assumption. The article therefore treats prosecutorial subordination as a structural risk created by appointment and accountability arrangements, rather than as a proposition that every prosecution is politically motivated.

iv. Fiscal dependence and judicial capacity

Financial independence is sometimes treated as a technical budgeting issue. It is better understood as an institutional safeguard. A court cannot exercise meaningful constitutional authority if it lacks the resources to pay judges, maintain premises, manage case files, support legal research and administer proceedings. The United Nations Basic Principles recognise both the need for judicial independence and the duty of states to provide adequate resources for the judiciary.[45] Financial security is therefore part of independence, not merely a question of administrative convenience.[46]Somalia's justice sector has operated within severe fiscal constraints. The World Bank's Security and Justice Public Expenditure Review found that justice institutions faced limited resources and weak fiscal capacity.[47] More recent Somali

[42]United States Department of State, 2023 Country Reports on Human Rights Practices: Somalia (US Department of State 2024), available at: https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/somalia(last accessed 28 May 2026).
[43]UN Basic Principles on the Independence of the Judiciary (adopted 6 September 1985, endorsed by GA Res 40/32 and 40/146), paras 1–7; United States Department of State, 2023 Country Reports on Human Rights Practices: Somalia (US Department of State 2024), available at: https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/somalia(last accessed 28 May 2026).
[44]UN Basic Principles on the Independence of the Judiciary (adopted 6 September 1985, endorsed by GA Res 40/32 and 40/146), paras 10–13; United States Department of State, 2023 Country Reports on Human Rights Practices: Somalia (US Department of State 2024), available at: https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/somalia(last accessed 28 May 2026).
[45]UN Basic Principles on the Independence of the Judiciary (adopted 6 September 1985, endorsed by GA Res 40/32 and 40/146), para 7.
[46]ibid
[47]World Bank, Somalia Security and Justice Sector Public Expenditure Review (World Bank 2017); Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).

planning documents continue to identify inadequate resources and institutional capacity as obstacles to justice-sector performance.[48] The precise budgetary figures in older studies should not be presented as current measurements; their value lies in demonstrating the historical pattern of fiscal weakness and its institutional consequences.

The architecture of financing matters as much as the amount. If the judiciary must depend on an executive ministry for routine operational funds, the executive acquires a form of practical leverage even where no formal power to direct a judgment exists.[49] The problem is therefore not solved merely by increasing the justice budget. A more durable solution requires a transparent appropriation mechanism and an administrative structure through which approved judicial funds reach the judiciary without discretionary interference in ordinary operations.[50]

Comparative lessons from Kenya and Uganda

Comparison with Kenya and Uganda demonstrates that judicial independence is strengthened when appointment and finance are protected through multiple institutional safeguards.[51] The purpose of the comparison is not to portray either jurisdiction as a perfect model. Both have experienced disputes over judicial independence and executive relations. Their relevance lies in specific constitutional mechanisms that reduce the number of points at which executive actors can unilaterally determine judicial careers or institutional resources.

Kenya's 2010 Constitution establishes a Judicial Service Commission whose membership includes senior judicial officers, advocates, a Public Service Commission nominee and public representatives. Article 172 assigns the Commission functions that include recommending judges for appointment and promoting judicial independence and transparent administration of justice. Article 173 creates a Judiciary Fund administered by the Chief Registrar, with approved judicial expenditure charged on the Consolidated Fund and paid directly into the Fund.[52] The Judiciary Fund Act further states that one of the Fund's objectives is to safeguard the financial and operational independence of the Judiciary.[53]Uganda provides a different but useful model. Article 128 of the Ugandan Constitution states that courts are independent and not subject to the control or direction of any person or authority.[54] It also provides that administrative expenses of the judiciary are charged on the Consolidated Fund and that the judiciary is self-accounting and may deal directly with the ministry responsible for finance. Articles 142 and 146–147 create a JSC that participates in appointments and disciplinary matters, with parliamentary approval required for senior judicial appointments. The design therefore distributes appointment authority across the President, JSC and Parliament rather than leaving it to one political actor.

The comparative lesson for Somalia is not to copy Kenyan or Ugandan institutions word for word. It is to identify the institutional principle behind them: independence is more resilient when no single political actor controls judicial appointments, career progression and

[48]World Bank, Somalia Security and Justice Sector Public Expenditure Review (World Bank 2017); Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).
[49]Provisional Federal Constitution of the Federal Republic of Somalia 2012, art 109A; Constitution of Kenya 2010, art 171; Constitution of the Republic of Uganda 1995, art 146.
[50]United Nations Basic Principles on the Independence of the Judiciary (adopted 6 September 1985, endorsed by GA Res 40/32 and 40/146), paras 10–13.
[51]Constitution of Kenya 2010, arts 160–173; Constitution of the Republic of Uganda 1995, arts 128, 142 and 146–147.
[52]Constitution of Kenya 2010, arts 171–173, available at: <https://new.kenyalaw.org/akn/ke/act/2010/constitution/eng@2010-09-03> (last accessed 28 May 2026); Judiciary Fund Act 2016 (Kenya), ss 3–4, available at: https://new.kenyalaw.org/akn/ke/act/2016/16/eng@2022-12-31(last accessed 28 May 2026).
[53]Constitution of Kenya 2010, art 173; Judiciary Fund Act 2016 (Kenya), s 3; Constitution of the Republic of Uganda 1995, art 128(5)–(6).
[54]Ibid

operational finance at the same time.[55] Somalia's reform debate should therefore focus on reducing cumulative dependency rather than searching for one perfect constitutional clause. A JSC without secure funding may remain vulnerable; a well-funded judiciary without transparent appointments may still be politically dependent; and both remain incomplete without constitutional adjudication capable of enforcing the rules.[56]

Reconstructing of judicial independence in Somalia

The analysis suggests five priorities. First, the JSC should be established or reconstituted through a transparent process that is legally insulated from unilateral executive alteration.[57] Its membership should combine judicial, professional and public representation, with clear qualifications, fixed terms and publicly stated procedures for nomination, appointment and removal.[58] Any role for political institutions should be structured as a check rather than as a mechanism for controlling the Commission.

Second, judicial appointments should be based on published criteria of legal competence, integrity, experience and independence.[59] Clan identity should neither be a formal quota nor an informal qualification. At the same time, transparency should be accompanied by diversity safeguards that prevent women, minority communities and other historically underrepresented groups from being excluded.[60] The objective is a judiciary that is socially legitimate without becoming a political allocation of judicial power.

Third, Somalia should create a protected judicial financing mechanism. The precise model can be debated, but it should include a transparent annual appropriation, a defined role for Parliament in approving the judicial budget and a direct administrative route for disbursing approved funds to the judiciary. Kenya's Judiciary Fund demonstrates one possible constitutional model, while Uganda demonstrates the value of a self-accounting judiciary.[61] Somalia can adapt these principles to its federal structure rather than adopting either model wholesale.[62]

Fourth, prosecutorial accountability should be separated from executive discretion. Appointment, tenure and disciplinary rules for senior prosecutors should be sufficiently secure to reduce the risk that prosecution becomes a political instrument.[63] At the same time, independence must be paired with accountability: transparent criteria, reasons for major prosecutorial decisions, internal review and parliamentary or judicial oversight where legally appropriate can reduce both political interference and prosecutorial impunity.

Fifth, constitutional adjudication must become effective.[64] The absence of an authoritative constitutional forum allows disputes about executive authority, federal relations and

[55]Constitution of Kenya 2010, arts 171–173; Constitution of the Republic of Uganda 1995, arts 128, 142 and 146–147.
56ibid
[57]Provisional Federal Constitution of the Federal Republic of Somalia 2012, art 109A; Constitution of Kenya 2010, art 171; Constitution of the Republic of Uganda 1995, art 146.
[58]Provisional Federal Constitution of the Federal Republic of Somalia 2012, art 109A; Constitution of Kenya 2010, arts 171–173; Constitution of the Republic of Uganda 1995, arts 146–147.
[59]United Nations Basic Principles on the Independence of the Judiciary (adopted 6 September 1985, endorsed by GA Res 40/32 and 40/146), paras 10–13.
[60]United Nations Basic Principles on the Independence of the Judiciary (adopted 6 September 1985, endorsed by GA Res 40/32 and 40/146), paras 1–2.
[61]Constitution of Kenya 2010, art 173; Judiciary Fund Act 2016 (Kenya), s 3; Constitution of the Republic of Uganda 1995, art 128(5)–(6).
[62]ibid
[63]United Nations Basic Principles on the Independence of the Judiciary (adopted 6 September 1985, endorsed by GA Res 40/32 and 40/146), paras 1–2.
[64]Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 109B–109C.

constitutional amendments to become political contests. A constitutional court should therefore have clearly defined jurisdiction, transparent judicial selection, secure tenure and sufficient administrative independence.[65] Its authority should extend to constitutional interpretation and to disputes concerning the legality of governmental action, while its procedures should allow access by individuals and public institutions in accordance with the Constitution and implementing legislation.

These reforms should be sequenced. Somalia cannot reasonably expect a fully independent judiciary to emerge from a single institutional reform while the surrounding political and fiscal environment remains unchanged. A more realistic sequence is,to establish the JSC, secure merit-based appointments, protect judicial finance, strengthen prosecutorial safeguards, and operationalise constitutional review. Each reform should reinforce the others. The goal is not merely to create institutions on paper, but to reduce the number of institutional dependencies through which political influence can be transmitted into judicial decision-making.

Conclusion

Somalia's judicial-independence problem is not adequately described as a simple failure to comply with constitutional text. The deeper problem is the persistence of institutional relationships that allow political authority to influence the personnel, resources and legal environment within which justice is administered. The historical record from the concentration of judicial power after the 1969 coup, through the destruction of formal institutions after 1991, to the incomplete implementation of the 2012 constitutional framework shows how difficult it is to rebuild judicial independence once institutional dependence has become normalised.

The paper has suggested that structured judicial subordination provides a useful way to understand this pattern. It captures the interaction of appointment vulnerability, fiscal dependence, prosecutorial influence and weak constitutional review without requiring proof of a single coordinated plan. The concept therefore shifts the analysis from asking whether a constitution declares judicial independence to asking whether the institutional system makes independent judicial action realistically possible. The comparative evidence from Kenya and Uganda supports a further conclusion. Judicial independence is strongest when it is distributed across several mutually reinforcing safeguards. Transparent appointments, professional judicial councils, protected financing and constitutional adjudication do not eliminate political pressure, but they make unilateral control more difficult. Somalia's reform challenge is consequently architectural: it must reduce the number of institutional points at which executive authority can influence the judiciary. The central implication is straightforward. Somalia does not need another constitutional declaration of judicial independence as much as it needs institutions capable of making the existing principle effective. The transition from power without accountability to constitutional government requires a judiciary that can be appointed without political bargaining, funded without discretionary executive dependence, supported by an accountable prosecution service and empowered to resolve constitutional disputes. Without those conditions, constitutional reform risks reproducing the very accountability deficit it seeks to overcome.

[65]Provisional Federal Constitution of the Federal Republic of Somalia 2012, arts 109B–109C; Ministry of Justice and Constitutional Affairs, Federal Republic of Somalia, Justice Sector Strategy 2025–2029 (Federal Republic of Somalia 2025).

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