

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Protection of Human Rights in Somalia: Structural, Legal, and Institutional Perspectives

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Abstract. *Somalia's constitutional guarantees of fundamental rights operate amid insecurity, poverty, displacement, and fragmented authority, producing a persistent gap between legal recognition and lived protection. This study evaluates how structural conditions, constitutional rules, and institutional arrangements shape enforcement, redress, and accountability. A qualitative doctrinal approach is applied, analyzing the Provisional Constitution of 2012, the Penal Code of Somalia 1962, the Independent Human Rights Commission Law (Law No. 16 of 2016), and related provisions on remedies and oversight, alongside comparative and international standards on effective remedies and due process. It also maps non-derogable and derogable rights and tests limitation practice against legality, necessity, proportionality, and non-discrimination. The analysis identifies three recurring constraints: weakened territorial control and service delivery; limited judicial capacity and perceived independence; and incomplete accountability architecture, including delayed operationalization of constitutionally mandated bodies such as the Ombudsman and Judicial Service Commission. The Study Concludes that, a constitutional entrenchment of rights is necessary but insufficient where institutional pathways for complaint-handling, investigation, and enforcement remain thin or uneven across regions. It was recommended that, prioritizing the establishment of the Judicial Service Commission and Ombudsman, strengthen court independence and access, resource the Human Rights Commission for investigations and follow-up, and harmonize federal–state coordination to ensure consistent minimum standards and reliable remedies for citizens and residents.*

Keywords: *Accountability; Constitution; Human; Institutions; Somalia.*

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

1. Introduction

Somalia has experienced persistent difficulties in consolidating a stable democratic system, resulting in uneven and inconsistent protection of fundamental rights in the contemporary period. Amid ongoing state reconstruction, the effective safeguarding of human rights has yet to be fully embedded as a central objective of governance, and enforcement remains limited despite their formal recognition in the Provisional Constitution.¹ This situation, however, contrasts with the immediate post-independence period, during which Somalia's legal development was more closely aligned with international human rights norms.² Following independence, the formal articulation of rights drew significantly on international instruments, particularly the Universal Declaration of Human Rights of 1948, which provided an early normative foundation for the incorporation of modern human rights principles into Somalia's emerging legal framework.

Under *Article 7 of the 1960 Constitution of Somalia* required that the laws of the Somali Republic conform, to the extent applicable, to the principles enshrined in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948. This provision reflected an early constitutional commitment to align domestic law with international human rights standards, signaling Somalia's intention at independence to ground its legal order in universally recognized rights principles.³

1.1. Historical Foundations of Human Rights and the Role of Islamic Culture in Somalia

The concept of human rights in Somalia has evolved through the interaction of international legal norms and deeply rooted religious and cultural values. While modern human rights discourse is often associated with international and Western legal traditions, Somali society is

¹ see, under Chapter 2 of the Constitution of 2012 as a whole

² BRILL, 'Chapter 3 The International Enforcement of Human Rights' (2022), Series: World Trade Institute Advanced Studies, Volume: 9, Pages: 161–222, available at <https://brill.com/display/book/9789004507890/BP000006.xml?language=en&srsId=AfmBOopDJtQgeTPNvYHU1ZYWEOCvSOVLMAYHtct4EVjMQJSToW7WvQAW>.

³ Citizenship Rights in Africa Initiative, 'Somalia-Constitution-1960. Available at <https://citizenshiprightsafrika.org/wp-content/uploads/2020/10/Somalia-Constitution-1960.pdf>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

predominantly Sunni Muslim, and its understanding of rights has long been shaped by Islamic principles.⁴

In Islam, human rights are understood as divinely ordained entitlements granted by God, rather than privileges conferred by political authority or legislative institutions. As such, these rights are regarded as inherent and inalienable, grounded in religious doctrine rather than state discretion. The most fundamental human right is the right to life and the inherent dignity of human existence. This principle is strongly affirmed in the Qur'an, which emphasizes the sanctity of human life by stating that *the unlawful killing of a single person outside the context of justice or preventing grave wrongdoing is equivalent to the killing of all humanity*.⁵ In the same vein, the sanctity of human life is reaffirmed in the Qur'an, which prohibits the taking of life except in accordance with *justice and due legal process*.⁶

This religious conception differs from secular legal systems in which rights are created through constitutions or legislation and may, in theory, be amended or withdrawn by the same authorities that establish them. In the Somali context, Islamic norms have historically provided a moral and legal framework for justice, dignity, and social obligations, influencing societal perceptions of rights and duties well before the formal adoption of international human rights instruments. Consequently, contemporary discussions on human rights protection in Somalia must be understood within this dual framework, where international human rights standards coexist with, and are often interpreted through, Islamic legal and ethical traditions.⁷

1.2. Colonialism and Human Rights in Somalia

Human rights were initially understood as moral and legal ideals in ancient civilizations, expressed through the notion of inherent or natural rights. These rights were believed to flow from the very nature of human beings and to be inseparable from human dignity and existence. For centuries, such ideas remained largely philosophical and were unevenly applied across societies. The modern conception of human rights, however, emerged in the aftermath of the Second World War (1939-1945). The unprecedented scale of destruction, mass atrocities, and loss of civilian life during the war provoked global moral outrage and raised profound concerns

⁴ Max Planck Encyclopedias of International Law [MPIL], 'Somalia, Conflict' (2017)

⁵ see, Qur'an, Surah Al-Mā'idah (5), Verse 32

⁶ See, Qur'an surah Al-An'ām, 6:151

⁷ Ojielo, M. Ozonnia, 'Human Rights and Sharia'h Justice in Nigeria' (2003), *Annual Survey of International & Comparative Law*, Vol. 9: Issue 1, Article 7. Available at: <http://digitalcommons.law.ggu.edu/annlsurvey/vol9/iss1/7>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

about the protection of humanity. This period marked a decisive turning point, leading to the internationalization of human rights through new legal frameworks and global commitments.⁸

This development must also be understood against the background of colonialism and the Scramble for Africa in the late nineteenth century, when European powers partitioned African territories without regard for the rights, identities, or consent of local populations. Colonial rule was characterized by exploitation, coercion, racial hierarchy, and systematic denial of fundamental freedoms. These experiences exposed the consequences of unchecked state power and the absence of universal rights protections. Consequently, the post-war human rights movement sought not only to prevent the recurrence of wartime atrocities but also to respond to the injustices produced by colonial domination, laying the foundation for contemporary international human rights law and decolonization efforts.⁹

As reflected in Africa's broader anti-colonial normative vision which emphasizes the liberation of the continent from colonialism, neo-colonialism, apartheid, and all forms of discrimination based on race, ethnicity, religion, or political opinion the legacy of colonial rule continues to shape contemporary human rights challenges.¹⁰ Like many African states, Somalia experienced colonialism primarily as a system of commercial exploitation accompanied by externally imposed legal and social structures that disregarded indigenous rights and values. Colonial administrations introduced coercive legal frameworks designed to consolidate control, normalize arbitrary detention, and suppress political expression.¹¹

The implementation of harsh measures by Italian and British colonial authorities characterized by repression, restrictive regulations, and limitations on civil liberties triggered persistent resistance across Somali society. These policies undermined individual freedoms, marginalized indigenous participation in public affairs, and stripped communities of essential legal

⁸ Aniruddha Shrivastava and Aman Tamrakar, 'Protection of Human Rights in India-A Critical Analysis' (2022), Volume 18, *PEN ACCLAIMS*, available at <https://penacclaims.com/wp-content/uploads/2022/02/Aman-Tamrakar.pdf>.

⁹ Jalata, Asafa, 'European Colonial Terrorism and the Incorporation of Africa into the Capitalist World System' (2011). *Social Work Publications and Other Works*. https://trace.tennessee.edu/utk_socipubs/18.

¹⁰ African Charter on Human and Peoples' Rights, 'Organization of African Unity' Decision 115 (XVI) on the preparation of a draft African Charter on Human and Peoples' Rights, Sixteenth Ordinary Session, Monrovia, 17-20 July 1979.

¹¹ Alzubairi F. 'On Imperialism, Colonialism, and Neo-Colonialism. In: Colonialism, Neo-Colonialism, and Anti-Terrorism Law in the Arab World' (2019), Published by *Cambridge University Press*, at pages 19-49, available at <https://www.cambridge.org/core/books/abs/colonialism-neocolonialism-and-antiterrorism-law-in-the-arab-world/on-imperialism-colonialism-and-neocolonialism/D25CC1F782B0B7147272279DCB711C5D>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

safeguards. As a consequence, anti-colonial movements gradually united around claims for autonomy, national sovereignty, and constitutional governance. This sustained opposition to external rule fostered a sense of shared political purpose that transcended territorial and clan boundaries, laying the groundwork for the emergence of a unified Somali state.¹²

Colonial rule in Somalia left a complex legacy for human rights. While it stimulated collective resistance and demands for freedom, constitutional governance, and self-determination, it also entrenched coercive legal structures and centralized administrative practices that restricted the rights of the local population. The struggle against colonial domination therefore served both as a unifying force and as a formative moment in shaping national aspirations for a constitutional order based on rights and the rule of law. These aspirations found their first formal expression at independence, leading to a short period of democratic governance founded on constitutional guarantees of fundamental rights.¹³

1.3. Early Democratic Experience and Its Abrupt Interruption (1960-1969)

During the period between 1960 and 1969, Somalia experienced one of the most notable democratic experiments in post-independence Africa. A defining moment of this era was the peaceful transfer of presidential power in 1967, when *Aden Abdullah Osman*, Somalia's first President, voluntarily handed over office to *Abdirashid Ali Shermarke* following competitive elections. This transition, conducted through constitutional procedures and without political violence, distinguished Somalia as a rare example of democratic consolidation on the continent at the time.¹⁴

This democratic period was closely associated with the enjoyment of fundamental human rights. The 1960 Constitution provided robust guarantees for civil and political liberties, including freedom of expression, association, political participation, and judicial protection. Independent courts, a pluralistic parliament, and an active press contributed to an environment in which

¹²Ahmed Kheir Osman and Abdishakur Ali, 'Death Penalty Report in Somalia' (2024), *Legal Archives Center*, available at <https://lac.so/wp-content/uploads/2025/03/Death-Penalty-Report-of-Somalia-2024.pdf>.

¹³ Sabiti Makara, 'The Challenge of Building Strong Political Parties for Democratic Governance in Uganda: Does multiparty politics have a future? *Les Cahiers d'Afrique de l'Est / The East African Review*' (2009), Open Edition Journal, available at <file:///C:/Users/previ/Downloads/eastafrica-580.pdf>.

¹⁴ Adam, Hussein M 'Formation and Recognition of New States: Somaliland in Contrast to Eritrea' (1995), *Review of African Political Economy* 21, no. 59, 21–38. <http://www.jstor.org/stable/4006181>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

political dissent and civic engagement were largely tolerated. Citizens were able to participate meaningfully in public affairs, and the rule of law functioned as a central pillar of governance.¹⁵

Moreover, Somalia's early democratic institutions reflected a commitment to constitutionalism and accountability. Electoral competition, parliamentary oversight, and respect for legal norms fostered public confidence in state authority. However, this rights-based constitutional order proved fragile. The democratic trajectory was abruptly halted by the 1969 military coup following the assassination of President Shermarke. The suspension of the Constitution and the concentration of power in military hands marked a decisive rupture, replacing constitutional human rights guarantees with authoritarian rule and fundamentally altering the course of human rights protection in Somalia.¹⁶

The phenomenon of military coups and authoritarian rule in Somalia, particularly following the takeovers of 1969 and 1991, did not arise in isolation but reflected a broader pattern across post-independence Africa. These unconstitutional changes of government were typically accompanied by the concentration of power, suspension of constitutional order, and widespread human rights violations, including restrictions on political freedoms and the erosion of the rule of law. Somalia was therefore not an exception to this continental trend.¹⁷

Since the 1950s, military coups have been a recurrent feature of African political history. Of the continent's 54 states, 45 have experienced at least one coup attempt, while 37 countries approximately two-thirds of Africa have undergone at least one successful coup in which the perpetrators retained power for a sustained period as illustrated in *Figure 1*. This pattern underscores the prevalence of unconstitutional seizures of power in Africa's post-colonial era and their profound implications for constitutional governance and human rights protection.¹⁸

¹⁵ Khayre, Ahmed Ali M., *Somalia: An Overview of the Historical and Current Situation* (2016). Available at SSRN: <https://ssrn.com/abstract=2771125> or <http://dx.doi.org/10.2139/ssrn.2771125>,

¹⁶ *Ibid*

¹⁷ Megan Duzor and Brian Williamson, 'Coups in Africa: A recent rise in the overthrow of governments on the African continent prompts a closer look at the phenomenon' (2023), *VOA news, USA*, available at <https://projects.voanews.com/african-coups/>.

¹⁸ *ibid*

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

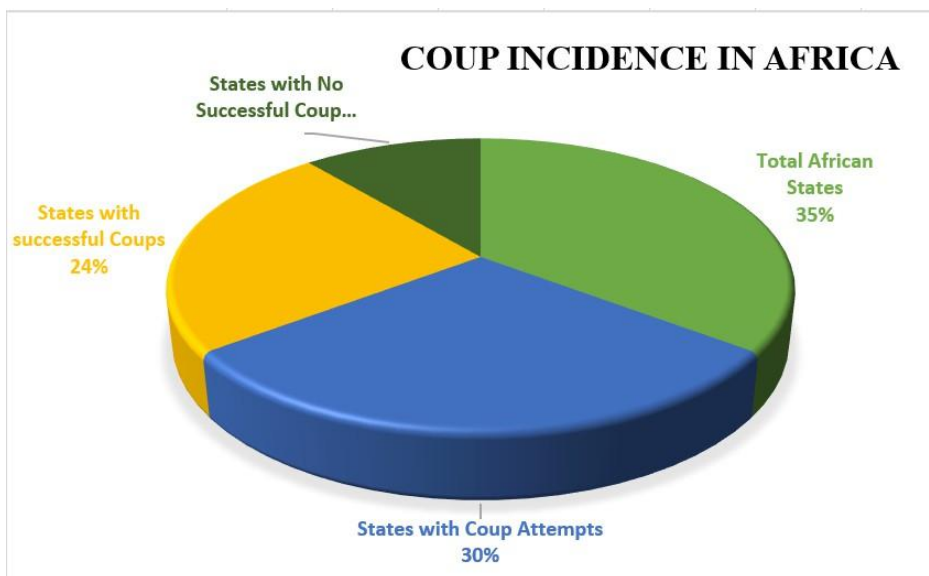


Figure 1: *Military Coups and their Impact on Human Rights in Africa*

2.1 Structural Context and Systemic Constraints on Human Rights Protection in Somalia

The structural perspective provides a foundational lens for understanding the protection of human rights in Somalia, as it situates legal norms and institutional arrangements within the broader socio-political and economic environment in which they operate. In contexts of fragile statehood, the effectiveness of human rights protection is not determined solely by the existence of constitutional guarantees or international commitments, but by the structural conditions that shape state authority, administrative capacity, and societal access to rights.¹⁹ In Somalia, prolonged insecurity, entrenched poverty, federal fragmentation, and chronic capacity constraints collectively form a structural environment that significantly limits the realization of human rights.

A central structural constraint is persistent insecurity and armed conflict. Decades of civil war, coupled with the continued presence of non-state armed actors, have undermined the state's monopoly over the use of force and restricted its ability to exercise effective control over territory. In many regions, especially outside major urban centers, state institutions operate

¹⁹ Derek G. Evans, 'Human Rights and State Fragility: Conceptual Foundations and Strategic Directions for State-Building' (2009), *Journal of Human Rights Practice*, Volume 1, Issue 2, Pages 181-207, <https://doi.org/10.1093/jhuman/hup007>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

intermittently or not at all. This insecurity directly affects the protection of fundamental rights, including the right to life, personal security, and freedom of movement. It also weakens accountability mechanisms, as investigations into violations, prosecutions of perpetrators, and enforcement of judicial decisions are often impossible in insecure environments. Where security considerations dominate governance priorities, human rights protection tends to be subordinated to short-term stability objectives, further eroding legal safeguards.²⁰

Closely linked to insecurity is widespread poverty and socio-economic vulnerability, which constitutes a structural barrier to the enjoyment of human rights. Somalia remains one of the poorest countries globally, with large segments of the population lacking access to basic services such as health care, education, clean water, and adequate housing. These conditions undermine the realization of economic, social, and cultural rights and indirectly affect civil and political rights by limiting public participation and access to justice. Poverty constrains individuals' ability to assert their rights, seek legal remedies, or engage with formal institutions. In practice, constitutional guarantees often remain inaccessible to populations whose daily priorities center on survival rather than legal recourse.²¹

Poverty also intersects with displacement and humanitarian dependence. Recurrent droughts, floods, and conflict have resulted in large-scale internal displacement, placing additional strain on already limited state capacity. Displaced populations often reside outside formal administrative structures, further distancing them from legal protection and institutional oversight. In such settings, human rights protection becomes fragmented and heavily reliant on humanitarian actors rather than state institutions, weakening long-term accountability and sustainability.²²

Another critical structural factor is federal fragmentation and uneven governance. Somalia's federal system, while constitutionally intended to promote decentralization and inclusion, has produced fragmented authority and divergent administrative capacities across Federal Member States. Variations in legal frameworks, institutional strength, and political priorities have led to inconsistent standards of human rights protection across regions. In the absence of clear vertical coordination and harmonized enforcement mechanisms, constitutional rights may be

²⁰ *ibid*

²¹ Ebenezer Durojaye and Gladys Mirugi-Mukundi, 'Exploring the link between poverty and human rights in Africa' (2020), *Pretoria University Law Press (PULP)*, South Africa, available at https://dullahomarinstitute.org.za/socio-economic-rights/research-and-publications/publications/2020_exploring-the-link-between-poverty-and-human-rights-in-africa.pdf.

²² *ibid*

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

interpreted and implemented differently depending on jurisdiction. This fragmentation complicates state compliance with international human rights obligations, which require uniform application across national territory.²³

Federal fragmentation also affects accountability structures. Disputes over mandates between federal and state authorities often delay or obstruct responses to human rights violations. In some cases, political considerations override legal obligations, particularly where enforcement may expose powerful actors to scrutiny. The lack of effective intergovernmental coordination thus weakens both preventive and remedial aspects of human rights protection.²⁴

Underlying these challenges are chronic institutional and administrative capacity constraints. Somalia's public institutions operate with limited financial resources, shortages of trained personnel, and underdeveloped administrative systems. Courts, law enforcement agencies, and oversight bodies frequently lack the technical capacity, infrastructure, and independence necessary to function effectively. These constraints reduce the state's ability to translate legal commitments into practical protection. Even where legal frameworks exist, enforcement mechanisms are often weak, delayed, or inaccessible, reinforcing a gap between formal rights and lived realities.²⁵

Capacity constraints also affect policy formulation and implementation. Limited data collection, weak monitoring systems, and inadequate coordination hinder evidence-based decision-making and obstruct systematic assessment of human rights conditions. As a result, responses to violations are often ad hoc rather than institutionalized, undermining consistency and predictability.²⁶

²³ Mohamed Farah Hussein, 'Somalia's Broken Federalism: Why Decentralization Became Fragmentation?' (2025), *Hiiraan Online News*, available at https://www.hiiraan.com/op4/2025/Aug/202546/somalia_s_broken_federalism_why_decentralisation_became_fragmentation.aspx.

²⁴ *ibid*

²⁵ Popy Rakhmawaty¹, Binsar Jon Vic, 'The Gap Between Regulation and Implementation in Legal Protection for Persons with Disabilities' (2025), *Greenation International Journal of Law and Social Sciences*, 3(2):182-190, available at https://www.researchgate.net/publication/392755269_The_Gap_Between_Regulation_and_Implementation_in_Legal_Protection_for_Persons_with_Disabilities.

²⁶ Hlanganani Mnguni, 'Barriers to evidence-based policymaking in Africa: A literature review' (2025), *International Journal of Development and Sustainability*, Volume 14 Number 2, Pages 166-180, available at https://www.researchgate.net/publication/392218936_Barriers_to_evidence

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Taken together, these structural conditions create an environment in which human rights protection is shaped more by systemic limitations than by normative intent. While Somalia's legal framework reflects an acknowledgment of fundamental rights, structural realities significantly constrain enforcement and compliance. Understanding these constraints is essential for assessing the effectiveness of human rights protection in Somalia, as they reveal why legal recognition alone is insufficient. Any meaningful effort to strengthen human rights protection must therefore address insecurity, socio-economic deprivation, governance fragmentation, and capacity deficits alongside legal and institutional reforms.²⁷

2.2. Somalia as a Fragile State: Linking Structural Constraints to Statehood Functions

According to the *Fragile States Index 2024*, Somalia ranks first globally with a score of 111.3, indicating extreme state fragility. This empirical assessment reinforces the argument that structural weaknesses in security, governance, and institutional capacity significantly undermine the effective protection of human rights.²⁸

Definitions of the concepts of a 'weak state' or 'fragile state' vary widely, reflecting the diverse contexts in which they are applied. The most widely accepted understanding assesses state fragility by examining the extent to which a country is able to perform the core functions typically associated with effective statehood. From this standpoint, a fragile state is one in which the government has lost effective control over parts of its territory and lacks the capacity to deliver essential functions and protections to its population.²⁹

The structural constraints outlined above align closely with the characteristics commonly associated with fragile states. Somalia's prolonged insecurity, limited territorial control, socio-economic deprivation, fragmented governance, and weak institutional capacity collectively reflect a persistent inability to perform core functions of statehood in a consistent and effective

²⁷ ibid

²⁸ The Fund for Peace, '*Fragile States Index 2024 (2024)*' available electronically at <https://fragilestatesindex.org/global-data/>. accessed 9 January 2026.

²⁹ Ahmad Biglari and Ehsan Khezri, 'Analytical Study of the Concept of Fragile State' (2025), *International Studies Journal*, Volume 21, Issue 3 - Serial Number 83, Pages 53-74, available at https://www.isjq.ir/article_212900_en.html.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

manner. These conditions do not merely coexist with human rights challenges; they actively shape and reproduce them.³⁰

While most scholarly analyses assess statehood by reference *to three or four core functions*. The first is security, which entails the state's responsibility to protect its population from internal and external threats through effective control of resources and the maintenance of a monopoly over the legitimate use of force, typically exercised through the military and police. The second function concerns welfare provision, encompassing the delivery of public services and redistribution of economic resources through taxation and other revenues, including policies relating to social protection, employment, education, health, economic management, and environmental governance.³¹

A third dimension is constitutional legality, which relates to the protection of individuals from arbitrary action through the rule of law and effective institutional checks and balances, particularly the separation of legislative, executive, and judicial powers. In some frameworks, a fourth function is the promotion of economic development, whereby the state creates conditions conducive to sustainable economic growth and improved livelihoods.³²

2. Research Methods

This study employs a qualitative research method with a descriptive-analytical approach. The objective is to dissect the effectiveness of human rights protection in Somalia through three primary lenses: state structure, legal frameworks, and institutional roles. This study applies two main approaches: Statutory-Normative Approach: Examining Somalia's 2012 Provisional Constitution, national laws, and international conventions ratified by Somalia. Socio-Legal Approach: Analyzing how structural factors (such as the clan system, customary *Xeer* law, and armed conflict) influence the practical implementation of human rights. The study relies on secondary data, classified as: Primary Legal Materials: The Constitution of Somalia, the Universal Declaration of Human Rights (UDHR), and international treaties such as the ICCPR and ICESCR. Secondary Legal Materials: Annual reports from the UN (UNSOM), publications from Human

³⁰ Welt Hunger Hilfe, 'Welt Hunger Hilfe in Fragile States' (2010), Policy Paper, https://www.welthungerhilfe.org/fileadmin/pictures/publications/en/position_papers/2010_position_paper_policy_paper_fragile_states_en.pdf.

³¹ Daniel Lambach and Felix Bethke, 'Causes of state collapse and fragile statehood: an overview of the state of research' (2012), *Institute for Development and Peace*, https://www.researchgate.net/publication/283855719_Ursachen_von_Staatskollaps_und_fragiler_Staatlichkeit_eine_Ubersicht_uber_den_Forschungsstand.

³² *ibid*

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Rights Watch and Amnesty International, as well as credible international academic journals. 3. Data Collection Technique Data is collected through Library Research. A deep dive is conducted into legal documents, independent investigative reports, and academic literature to build arguments based on factual data regarding the situation in Somalia. 4. Data Analysis Technique. The data is analyzed qualitatively using a deductive method. The researcher moves from general international human rights norms to the specific problematic realities in Somalia to draw conclusions regarding the structural and institutional effectiveness of rights protection.

3. Results and Discussion

3.1. Constitutional Protection of Human Rights in Somalia

The Somali Constitution enshrines a comprehensive catalogue of fundamental rights and freedoms and reflects the distinction commonly recognized in international human rights law between *derogable* and *non-derogable* rights. This classification is particularly relevant in contexts of emergency, conflict, or public crisis, where the scope of permissible state action may be temporarily expanded, yet remains subject to constitutional and legal limits.³³

Non-derogable rights are those that remain inviolable under all circumstances. The Constitution affirms that certain core rights such as the right to life, human dignity, freedom from torture, cruel or degrading treatment, slavery, and retroactive criminal punishment may not be suspended or limited, even during states of emergency. These rights represent absolute legal guarantees and form the normative foundation of constitutional order and human dignity.³⁴

In contrast, *derogable* rights are rights that may be subject to limitation or temporary suspension in exceptional circumstances, provided that such measures are lawful, necessary, proportionate, and consistent with constitutional principles. These typically include rights such as freedom of movement, assembly, expression, and certain procedural guarantees. Any restriction on *derogable* rights must be prescribed by law and aimed at addressing legitimate public interests, such as national security or public order. By incorporating this distinction, the

³³ Stuart Wallace, Derogations from the European Convention on Human Rights: The Case for Reform, *Human Rights Law Review*, (2020), Volume 20, Issue 4 Pages 769–796, <https://doi.org/10.1093/hrlr/ngaa036>.

³⁴ Daphna Shrager, 'Human Rights in Emergency Situations under the European Convention on Human Rights' (1986), Series: *Israel Yearbook on Human Rights*, Volume: 16, Pages: 217–242, Publisher: Brill Nijhoff, at <https://brill.com/display/book/edcoll/9789004423008/BP000009.xml>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Somali Constitution seeks to balance the need for effective governance in times of crisis with the imperative of protecting fundamental human rights and upholding the rule of law.³⁵

1) *Non-Derogable Civil and Political Rights under the Somali Constitution*

At present, Somalia does not have a single statute that comprehensively regulates human rights. However, the Provisional Constitution of the Federal Republic of Somalia guarantees a core set of fundamental rights that are protected under all circumstances. These rights, classified as *non-derogable*, are constitutionally entrenched and may not be suspended or withdrawn regardless of the prevailing situations which remains inviolable under all circumstances and may not be suspended even in times of emergency, war, or public crisis. In fragile contexts like Somalia, they serve as the last legal safeguard against authoritarian practices.³⁶ These *non-derogable* rights include:

a. Freedom from torture and cruel, inhuman or degrading treatment or punishment

The prohibition of torture and cruel, inhuman, or degrading treatment constitutes one of the core *non-derogable* rights protected under the Provisional Constitution of the Federal Republic of Somalia. Although this protection is articulated across several clauses, Article 15 collectively establishes a comprehensive safeguard for personal liberty, security, and physical integrity, reflecting both constitutional and international human rights standards.³⁷

Article 15 affirms the right of every person to liberty and personal security and expressly prohibits illegal detention, violence, torture, and inhumane treatment in all forms. This provision extends beyond state actors to encompass all forms of violence, including gender-based violence, thereby reinforcing the absolute nature of the prohibition. By declaring the physical integrity of the person inviolable, the Constitution further protects individuals from medical or scientific experimentation without informed consent, emphasizing respect for human dignity and bodily autonomy.

Notably, Article 15 explicitly characterizes female genital mutilation (FGM) as a cruel and degrading practice amounting to torture and categorically prohibits it. This explicit constitutional recognition elevates the prohibition of FGM to the level of a *non-derogable* right and aligns Somalia's constitutional framework with international human rights norms

³⁵ *ibid*

³⁶ Bashir M. Sheikh-Ali, 'Rule of Law and Independent Judiciary in Somalia' (2025), *Heritage of Institute*, available at <https://moj.gov.so/wp-content/uploads/2025/11/Rule-of-Law-and-Independent-Judiciary-in-Somalia.pdf>.

³⁷ *see*, article 15 of the Somalia Constitution of 2012

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

prohibiting torture and gender-based violence. Taken together, Article 15 establishes an absolute constitutional ban on torture and inhuman treatment that remains applicable under all circumstances, including emergencies or conflict. In Somalia's fragile context, this provision functions as a critical legal safeguard against abuse of power and affirms the inviolability of human dignity as a foundational constitutional principle.³⁸

b. Freedom from slavery or servitude

Freedom from slavery, servitude, and forced labor is a *non-derogable* right expressly guaranteed under Article 14 of the Provisional Constitution of the Federal Republic of Somalia. The provision establishes an absolute prohibition against slavery, servitude, human trafficking, and forced labor in all forms and for any purpose. By using categorical language, the Constitution affirms that no circumstances whether emergency, conflict, or public necessity may justify the suspension of this right.³⁹

Article 14 reflects Somalia's constitutional commitment to human dignity and personal autonomy by rejecting practices that reduce individuals to objects of exploitation or coercion. The inclusion of trafficking within the scope of the prohibition broadens protection beyond traditional forms of slavery to address contemporary manifestations of exploitation, including forced labor, sexual exploitation, and debt bondage or debt slavery. This aligns the Somali constitutional framework with international human rights standards that treat freedom from slavery and servitude as an absolute norm of international law.⁴⁰

In a fragile and conflict-affected context, where vulnerabilities to exploitation are heightened, Article 14 serves as a critical safeguard against abuse by both state and non-state actors. As a non-derogable right, it reinforces the principle that certain violations are constitutionally impermissible under all circumstances and underscores the inviolability of human dignity within Somalia's legal order.

c. Prohibition of arbitrary deprivation of life

The prohibition of arbitrary deprivation of life constitutes a core *non-derogable* human right under international human rights law and is implicitly protected within the Somali constitutional

³⁸ Centre for Public Interest Law, 'Article 44: Non-derogable rights of Uganda' <https://cepiluganda.org/cepil--know-rights/article-44-non-derogable-rights/>.

³⁹ see, article 14 of the Somalia Constitution of 2012

⁴⁰ US Department of States, 'Trafficking in Persons Report: Special Case of Somalia' (2019), <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/somalia>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

framework. While the Provisional Constitution guarantees the right to life, it does not treat the right as absolute in the sense of prohibiting all forms of deprivation of life. Rather, it prohibits arbitrary deprivation of life, thereby allowing limited exceptions grounded in law, due process, and justice. The currency of the phrase 'arbitrary deprivation' to identify breach of the right to life derives from Article 6 of the Civil and Political Covenant, that ... no one shall be arbitrarily deprived of his life.⁴¹

In Somalia, the constitutional protection of the right to life operates within a legal order that recognizes Islamic Sharia as a foundational source of law. Under Sharia, the principle of *qisās* (retributive justice) permits capital punishment in cases of intentional homicide, subject to strict legal conditions, evidentiary standards, and procedural safeguards. This exception does not negate the *non-derogable* nature of the right to life; instead, it delineates the boundary between arbitrary killing, which is absolutely prohibited, and lawful deprivation of life, which occurs only through judicial process.

From a constitutional and human rights perspective, the decisive factor is arbitrariness. Extrajudicial killings, summary executions, deaths resulting from excessive use of force, and killings carried out without lawful authority or due process constitute arbitrary deprivation of life and are prohibited under all circumstances, including emergencies or armed conflict. These prohibitions remain *non-derogable* and bind both state and non-state actors. Accordingly, the existence of capital punishment under Sharia law does not undermine the *non-derogable* character of the prohibition against arbitrary deprivation of life. Rather, it reinforces the principle that deprivation of life is permissible only where it is lawful, proportionate, and subject to strict judicial oversight.⁴²

d. Freedom from retroactive criminal punishment (Principle of Legality)

The principle of legality, expressed in the maxim *nullum crimen, nulla poena sine lege* (no crime and no punishment without law), constitutes a core *non-derogable* right in both international human rights law and the Somali legal system. This principle guarantees that individuals may

⁴¹ C. K. Boyle, 'The Concept of Arbitrary Deprivation of Life' (1985), Series: International Studies in Human Rights, Volume: 3, Publisher: Brill Nijhoff, available at https://brill.com/display/book/edcoll/9789004482296/B9789004482296_s015.xml?body=citedBy-133843.

⁴² Ibid

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

only be held criminally liable for conduct that was clearly defined as an offence by law at the time it was committed and subjected only to penalties prescribed by that law.⁴³

This safeguard is firmly embedded in Somali penal law. *Article 1* establishes that no act may be punished unless it is expressly criminalized by law, and no penalty may be imposed unless it is legally prescribed. *Article 2* further reinforces the prohibition of retroactive criminal punishment by affirming that conduct which was not an offence under the law in force at the time of commission cannot give rise to criminal liability. Importantly, the law also incorporates the principle of *lex mitior*, is understood to mean that, if the law relevant to the offence of the accused has been amended, the less severe law should be applied.⁴⁴

As a *non-derogable* right, the principle of legality may not be suspended under any circumstances, including states of emergency, armed conflict, or public crisis. Its purpose is to protect individuals from arbitrary prosecution, retrospective criminalization, and abuse of state power. By requiring clarity, foreseeability, and legality in criminal law, this principle upholds legal certainty and the rule of law.

e. Recognition as a person before the law

Recognition as a person before the law affirms that every individual is regarded as a legal subject rather than merely an object of regulation. It guarantees that all persons possess legal existence and capacity, enabling them to enjoy and exercise rights and obligations, such as owning property, entering into legal relationships, and seeking judicial protection. This recognition applies irrespective of nationality, status, or personal characteristics and forms the foundation upon which all other human rights depend. By ensuring equal legal protection and non-discrimination, this principle requires that laws and public policies treat individuals fairly while permitting special measures aimed at addressing historical disadvantage or vulnerability in order to achieve substantive equality.⁴⁵

⁴³ Somali Penal Code, Legislative Decree No 5 of 16 December 1962, Available at <https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Somalia-Penal-Code.pdf>, accessed 9/Jan/2026

⁴⁴ International Residual Mechanism for Criminal Tribunals, '*Lex mitior*' (2006), available at <https://cld.irmct.org/notions/show/524/lex-mitior#:~:text=The%20principle%20of%20lex%20mitior,severe%20law%20should%20be%20applied.>

⁴⁵ Utrecht University, 'Universal Declaration of Human Rights 75 Years: Article 6 Recognition before the law' (2022), <https://www.uu.nl/en/education/universal-declaration-of-human-rights-75-years/udhr-in-words-and-images/udhr-articles-1-30/article-6-recognition-before-the-law>. Accessed 9/Jan/2026

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

In the Somali constitutional framework, this principle is expressly protected under *Article 11 on Equality*, which guarantees that all citizens enjoy equal rights and duties before the law without discrimination. The provision prohibits differential treatment based on sex, religion, social or economic status, political opinion, clan affiliation, disability, occupation, birth, or dialect, thereby establishing universal legal recognition and equality.

Article 11 reinforces the rule of law by preventing exclusion, discrimination, or denial of legal standing, whether by the state or other actors. In Somalia's context, where social stratification, clan dynamics, and displacement may risk marginalization, constitutional equality serves as a critical safeguard against arbitrary governance. By affirming equal legal personality and non-discrimination, Article 11 upholds human dignity and functions as an essential *non-derogable* guarantee within Somalia's constitutional order.⁴⁶

2) Additional *Non-Derogable* Rights Recognized Through Interpretation

The *UN Human Rights Committee, in General Comment No. 29 on states of emergency*, has clarified that the scope of *non-derogable* rights extends beyond those explicitly enumerated in treaty texts. According to the Committee, certain prohibitions and procedural safeguards are inherently *non-derogable* because they are essential to the protection of core human rights and the preservation of human dignity. These includes; ⁻⁴⁷

a. Prohibition of Genocide, Crimes against Humanity and Enforced Disappearance

The prohibition of genocide, crimes against humanity, and enforced disappearance constitutes a core *non-derogable* norm under international human rights and humanitarian law.⁴⁸ Within Somalia's constitutional framework, the Provisional Constitution broadly prohibits violence,

⁴⁶ Taylor PM 'Article 16: Recognition as a Person Before the Law: A Commentary on the International Covenant on Civil and Political Rights' (2020), The UN Human Rights Committee's Monitoring of ICCPR Rights, Published by Cambridge University Press; at 445-457, available at <https://www.cambridge.org/core/books/abs/commentary-on-the-international-covenant-on-civil-and-political-rights/article-16-recognition-as-a-person-before-the-law/0F6C912D4A6A55514B31D0ACE177584A>.

⁴⁷ UN. Human Rights Committee, 'General Comment no. 29, States of Emergency (article 4): International Covenant on Civil and Political Rights' (2001), Ref: CCPR/C/21/Rev.1/Add.11, pages 8, Geneva, available at <https://digitallibrary.un.org/record/451555?ln=en&v=pdf>.

⁴⁸ Jovanović I. 'Enforced Disappearances in Armed Conflict through the Lenses of the International Convention for the Protection of All Persons from Enforced Disappearance' (2025), Published by Cambridge University Press; pages 19-46, available at <https://resolve.cambridge.org/core/books/enforced-disappearances/enforced-disappearances-in-armed-conflict-through-the-lenses-of-the-international-convention-for-the-protection-of-all-persons-from-enforced-disappearance/2C50F0AD497735D3060C039573AD7E18>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

torture, and inhuman or degrading treatment, thereby affirming fundamental protections of human dignity. However, it does not expressly define or criminalize genocide or crimes against humanity as distinct international crimes within the domestic penal system.

Moreover, Somalia is not currently a State Party to the Rome Statute of the International Criminal Court, which provides detailed legal definitions and accountability mechanisms for genocide, crimes against humanity, and war crimes under international law. As a result, while constitutional principles implicitly reject such grave violations, the absence of specific domestic criminal provisions creates a normative and enforcement gap in relation to these *non-derogable* prohibitions.⁴⁹

This gap underscores the distinction between constitutional recognition of human dignity and the codification of international crimes within national law. In the context of *non-derogable* rights, the lack of explicit legal frameworks addressing genocide, crimes against humanity, and enforced disappearance limits Somalia's capacity to ensure accountability and fully operationalize its obligations under customary international law, despite the absolute and universal prohibition of such acts.⁵⁰

b. Judicial guarantees essential to protect non-derogable rights

In addition, the Committee has emphasized that fundamental judicial guarantees necessary to safeguard *non-derogable* rights must themselves remain in force at all times. Such guarantees include access to a court, the availability of habeas corpus to challenge unlawful detention, and the core aspect of the presumption of innocence as discussed below; -

a) Access to a Court

Access to a court is a fundamental judicial guarantee that ensures every individual is recognized as a legal subject capable of seeking justice and legal protection. Under *Article 34 of the Provisional Constitution of Somalia*, every person is entitled to bring a legal case before a competent court and to receive a fair and public hearing by an independent and impartial tribunal within a reasonable time. This provision affirms the rule of law by ensuring that disputes, criminal accusations, and rights violations are resolved through lawful judicial processes rather than arbitrary action. In the context of *non-derogable* rights, access to a court

⁴⁹ The Coalition of Somali Human Rights Defenders CSHRDs, 'Somalia: Patterns of unlawful killings, torture and other ill-treatment' (2022), Joint Alternative Report, available at <file:///C:/Users/previ/Downloads/CAT-Alternative-report-Somalia.pdf>.

⁵⁰ Ibid

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

is essential because the absence of judicial remedies would render substantive rights ineffective. Even during emergencies or security crises, denying individuals access to courts would expose them to unchecked executive power and undermine constitutional legality.

b) *Habeas Corpus* and Protection against Arbitrary Detention

The guarantee of *habeas corpus* serves as a critical safeguard against unlawful or arbitrary detention and is closely linked to the protection of personal liberty. The Somali Constitution reinforces this protection through *Article 35*, which requires that any person arrested be brought before a competent court within 48 hours of arrest. This constitutional safeguard is complemented by the *Somali Criminal Procedure Code*, particularly *Article 66*, which empowers the Supreme Court or the Court of Appeal to order the immediate release of any person who is unlawfully or arbitrarily detained. Additionally, *Article 67* authorizes Regional or District Courts to order that a detained person be produced before the court to ensure that detention complies with the law. Together, these provisions ensure continuous judicial oversight over deprivation of liberty and constitute an essential *non-derogable* guarantee, as the suspension of *habeas corpus* would permit enforced disappearances, indefinite detention, and serious human rights violations.

c) Presumption of innocence

The presumption of innocence is a cornerstone of criminal justice and a fundamental component of the right to a fair trial. It is explicitly guaranteed under *Article 35(1)* of the Somali Constitution, which provides that an accused person is presumed innocent until proven guilty by a final judgment of a court of law. This principle is reinforced by additional safeguards, including the right to be informed promptly of the reasons for arrest, the right of family notification, protection against self-incrimination, and the exclusion of evidence obtained through coercion. These guarantees ensure that criminal proceedings are conducted fairly and that the burden of proof rests on the prosecution. As a judicial guarantee essential to the protection of *non-derogable* rights, the presumption of innocence may not be suspended even in times of emergency, as doing so would expose individuals to arbitrary punishment and undermine the integrity of the justice system.

3) Derogable Rights and Limitation Clauses under the Somali Constitution

The Somali Constitution recognizes that certain fundamental rights are not absolute and may be subject to lawful limitation. *Derogable* rights are those whose exercise may be limited under clearly defined legal conditions. *Article 38 establishes the constitutional framework governing*

Protection of Human Rights in Somalia: Structural ...
(Ahmed Kheir Osman)

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

such limitations and serves as a safeguard against arbitrary or discriminatory interference with fundamental freedoms.

Under Article 38, rights may be limited only by law and in a manner that does not target specific individuals or groups, thereby reinforcing legality and equality before the law. Any limitation must be reasonable and justifiable in light of constitutional values and must comply with the principles of necessity and proportionality. In assessing permissibility, factors such as the importance of the right affected, the legitimacy of the objective pursued, the suitability of the measure, and the availability of less restrictive alternatives must be considered.

The Constitution further regulates exceptional restrictions during a state of emergency under Article 131, emphasizing that limitations are neither automatic nor unlimited. Even in emergencies, *non-derogable* rights remain protected, and all restrictions must adhere to constitutional procedures and the rule of law. Overall, Article 38 ensures that limitations on rights remain exceptional, controlled, and consistent with human dignity and constitutional legality.

Political and civil rights are designated as 'Fundamental Rights' and are enshrined in Chapter Two of the Somali Constitution, which includes the following rights.

a. Protection of the Right to Life

Protection of the right to life in Somalia is constitutionally guaranteed under Article 13 of the Provisional Constitution, which affirms that everyone has the right to life. However, this right is not absolute and may be lawfully restricted under specific circumstances. In particular, Article 434 of the Somali Penal Code permits the death penalty for intentional homicide, reflecting the application of retributive justice. Accordingly, the right to life in Somalia is treated as *derogable* in limited and legally defined situations, where deprivation of life occurs pursuant to law and judicial process rather than arbitrarily.

b. Right to property

Article 26 of the Provisional Constitution of the Federal Republic of Somalia guarantees every person the right to own, use, enjoy, sell, and transfer property, and permits compulsory acquisition only where it is demonstrably required in the public interest and subject to just compensation agreed by the parties or determined by a court. This constitutional safeguard applies not only to formally titled private land but also to legally cognizable property interests that arise from long-term occupation, use, and development, particularly where such

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

occupation has been tolerated or regulated by public authorities over decades. While the *Law No. 41 of 13 September 1973* states that land is public property, and it contains provisions on repossession for public purposes.⁵¹

Under international law binding on Somalia, especially the African Charter on Human and Peoples' Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), evictions must comply with strict substantive and procedural standards. Article 14 of the African Charter protects property against arbitrary interference, while Article 11 of the ICESCR, as authoritatively interpreted by the UN Committee on Economic, Social and Cultural Rights in General Comment No. 7, treats forced evictions as *prima facie* incompatible with the right to adequate housing unless they are justified by a compelling public purpose and accompanied by adequate safeguards. These safeguards include genuine consultation, reasonable and sufficient notice, clear disclosure of the legal basis and public purpose of the eviction, access to judicial review, and measures to prevent homelessness or disproportionate hardship.

Core procedural protections: Genuine consultation with affected people, Adequate and reasonable notice, Clear information on the eviction, the public purpose, and available remedies, Opportunity to challenge the decision before an impartial body (court), No eviction into homelessness (especially where vulnerability is high), with resettlement/assistance where required.⁵² The landmark verdict of the *Olga Tellis vs. Bombay Municipal Corporation 1985* of Indian Supreme Court held that pavement dwellers through lacking title could not be arbitrary evicted their occupancy rights were linked to live hood and dignity.

In Somalia, the government has in recent instances evicted several households from public land that they had occupied continuously for decades. These evictions were carried out through administrative action, often on short notice, and in the absence of prior judicial authorization. In many cases, the affected residents were removed without a court order, without adequate procedural safeguards, and without access to an effective remedy to challenge the legality or necessity of the eviction before it was executed.

⁵¹ Somali Democratic Republic. (1973, September 13). Urban Land Distribution Law (Law No. 41 of 1973). Official Gazette of the Somali Democratic Republic.

⁵² Committee on Economic, Social and Cultural Rights. (1997). General Comment No. 7: The right to adequate housing (Article 11(1) of the International Covenant on Economic, Social and Cultural Rights): Forced evictions (UN Doc. E/1998/22). United Nations available electronically at https://www.refworld.org/legal/general/cescr/1997/en/53063?utm_source=chatgpt.com.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Applying this reasoning to *Article 26 of the Provisional Constitution of Somalia*, the legal position is even clearer. Article 26 guarantees the right to own, use, and enjoy property, and permits compulsory acquisition only in the public interest and subject to just compensation, either agreed upon by the parties or determined by a court. Evictions or demolitions carried out without a prior court order, without adequate notice, and without an opportunity for affected households to challenge the action fail to meet the constitutional threshold of legality. Executive eviction in such circumstances amounts to an arbitrary deprivation of property, which Article 26 implicitly prohibits.

Under comparative judicial practice, the Supreme Court of Uganda has held that evictions and demolitions must be carried out in a manner that respects human dignity and the fundamental rights of all affected persons, including the rights to life, property, and personal security. Authorities are therefore required to implement protective safeguards to prevent harm and disproportionate impact, particularly on vulnerable groups such as women, children, older persons, and persons with disabilities.⁵³ *Article 10 of the Constitution* affirms that human dignity is inherent in every person and is the foundation of all human rights, which must be respected and protected. Accordingly, State power may not be exercised in a manner that undermines or violates human dignity.

c. Right to Six Freedoms

The six fundamental freedoms are considered in this context with the understanding that they are not exhaustive and must be interpreted within the broader constitutional and human rights framework, as discussed below; -

a) Freedom of Expression and Opinions

Article 18 of the Somali Constitution guarantees every person the right to hold and express opinions, as well as to seek, receive, and share information and ideas through any means. This right encompasses freedom of speech and media, including electronic and online platforms. It also protects the freedom to express artistic creativity, academic knowledge, and research-based information without interference.

⁵³ Geoffrey Rugambwa, 'A Practical Guide to Lawful Land Evictions' (2023), Blog, published by Kakuru & Co. Advocates Solicitors and Legal Consultants, available at <https://kakuruadvocates.co.ug/blogs/how-lawfully-conduct-land-eviction#:~:text=This%20means%20that%20no%20eviction,have%20been%20carried%20out%20illegally.>

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

b) Freedom of Assembly

Article 20 of the Somali Constitution affirms the right of every person to organize and take part in meetings, as well as to engage in peaceful demonstrations and protests without prior authorization. It also guarantees the right to submit petitions to governmental institutions.

c) Freedom of Movement and the Right to a Passport

Article 21 of the Somali Constitution guarantees that every person lawfully residing in the Federal Republic of Somalia enjoys freedom of movement, the right to choose their place of residence, and the freedom to leave the country. It further affirms that every citizen has the right to enter and remain in Somalia and is entitled to a passport.⁵⁴ As per *article 12 of the ICCPR*, gives basic elements of liberty and freedom of movement within the land, air and sea of a country. This restriction can only be limited in exceptional circumstances, including protection of public health emergency or any other natural disaster.

d) Freedom of Association

Freedom of association entails respect for the right of workers and employers to voluntarily form, join, and operate organizations for the protection and advancement of their occupational interests, free from interference. Neither the State nor any other actor may influence, coerce, or discriminate against individuals based on their decision to associate or represent others. Consistent with this principle, *Article 16 of the Somali Constitution* guarantees every person the right to associate with others, including the freedom to establish and join organizations such as trade unions and political parties. It also protects the negative freedom of association, ensuring that no one may be compelled to join or remain part of any group.⁵⁵

e) Freedom to Practice any Profession or carry on any Occupation, Trade or Business

Although constitutions in many countries formally recognize the freedom to choose and pursue a profession, the scope and content of this right vary across legal systems, shaped by differing historical, cultural, and socio-economic contexts. In most modern constitutional frameworks,

⁵⁴ Osman, A. K. 'COVID-19 Pandemic in Somalia: A Constitutional Perspective' (2020), International Journal of Law and Politics Studies, 2(1), 4-8. <https://al-kindipublishers.org/index.php/ijlps/article/view/58>.

⁵⁵ Zakarie Yusuf Muse, 'A Review Article On the Somali Labor Code' (2021), International Journal of Legal Developments & Allied Issues (IJLDAI), Volume 7 Issue 6, available at <https://thelawbrigade.com/wp-content/uploads/2021/09/Zakarie-Yusuf-Muse-IJLDAI.pdf>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

occupational freedom is treated as a fundamental aspect of individual autonomy and economic liberty, subject to regulation in the public interest.⁵⁶

Under Article 23 of the Somali Constitution affirms that every citizen has the right to freely choose and engage in a trade, occupation, or profession. This constitutional guarantee underscores the principle that individuals should be able to pursue lawful economic activities without undue interference, while allowing the state to regulate professions only in a manner consistent with constitutional values and the protection of public interests.⁵⁷

f) Freedom of Religion and Belief

Article 17 of the Provisional Constitution of the Federal Republic of Somalia contains two interconnected clauses that must be read together rather than in isolation. The first clause guarantees individual freedom of religion, affirming that every person has the right to practice his or her faith without interference. This protects personal belief, worship, and religious observance, particularly in the private and communal sphere.⁵⁸

The second clause introduces a constitutional limitation on that freedom by providing that no religion other than Islam may be propagated in Somalia. Legally, this does not negate the right to personal belief or private religious practice, but it restricts public promotion, proselytization, and institutional expansion of religions other than Islam. The Constitution therefore draws a clear distinction between freedom of belief and worship (which is protected) and public religious propagation (which is constitutionally regulated).⁵⁹

Taken together, Article 17 reflects Somalia's constitutional identity as a Muslim-majority state while simultaneously preserving a limited form of religious freedom. The provision establishes a balancing model in which individual religious practice is safeguarded, but public religious expression is constrained in order to protect the Islamic character of the state, public order, and

⁵⁶ Bojan Perovic Emory University School of Law, What's Freedom Got to do with It? Occupational Freedom and the Illusion of Choice, 41 GA. ST. U. L. REV. 983 (2025). Available at: <https://readingroom.law.gsu.edu/gsulr/vol41/iss4/13>.

⁵⁷ Ibid

⁵⁸ International Commission of Jurists (ICJ), 'Violations of the Right to Freedom of Religion or Belief in Uganda' (2022), A Briefing Paper, available at <https://www.ici.org/wp-content/uploads/2022/02/Uganda-Violations-of-the-Right-to-Freedom-of-Religion-or-Belief-publications-briefing-paper-2022-ENG.pdf>.

⁵⁹ Ibid

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

social cohesion. This approach is consistent with constitutional systems that recognize religious freedom subject to expressly stated moral, cultural, or constitutional values.

4) Redress of Violations of Human Rights

Access to effective judicial remedies is a core pillar of the rule of law and is firmly protected under international and regional human rights instruments, as well as most national constitutions. The long-standing legal principle *ubi ius ibi remedium* that where there is a right, there must be a remedy captures the essence of this guarantee. Rights and freedoms lose their practical meaning if violations carry no legal consequences. Accordingly, an effective remedy must be accessible, affordable, timely, and capable of providing real redress, and the procedures for obtaining such remedies should be simple, prompt, and responsive to urgent situations.⁶⁰

Article 39 of the Provisional Constitution of Somalia establishes a clear constitutional guarantee for the redress of human rights violations. It obliges the law to provide adequate and effective procedures through which violations of fundamental rights may be challenged and remedied. By requiring that redress be available before courts that are readily accessible to the public, the provision emphasizes the central role of the judiciary in safeguarding constitutional rights and ensuring that justice is not merely theoretical but practically attainable.⁶¹

In the Somali context of today, the courts and the judiciary have ceased to exercise independent judgment and instead validate executive action without rigorous legal scrutiny, thereby risking their transformation into an auxiliary of the executive, leading to the erosion of judicial independence and a breach of the constitutional principle of separation of powers; as a consequence, violations of human rights are left without effective judicial redress, undermining the protection and enforcement of fundamental rights.⁶²

d. Institutional Framework of Human Rights in Somalia

⁶⁰ Jon M. Van Dyke & Gerald W. Berkley, 'Redressing Human Rights Abuses' (1992), *Denver Journal of International Law & Policy*, Volume 20, Number 2, article 15, available at <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1808&context=djilp>.

⁶¹ See, Article 8: UDHR ; Art 2(3): ICCPR; Art 14(1) CAT; Art 6 CERD; Art 2 CEDAW

⁶² Bhatnagar, Dr. Shreshth, *Executive Interference and Judicial Independence: A Critical Study of Constitutional Jurisprudence and Challenges* (2025). Available at SSRN: <https://ssrn.com/abstract=5158150> or <http://dx.doi.org/10.2139/ssrn.5158150>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Somalia's human rights framework is anchored in constitutionally established institutions mandated to promote, protect, and enforce fundamental rights and freedoms, with an emphasis on independence, oversight, and accountability as discussed below in details; -

a) Somalia National Human Rights Commission (NHRC)

Nations have independent National Human Rights Institutions (NHRIs), like Somalia's NHRC or Uganda's UHRC, that monitor rights at home, alongside UN bodies like the Human Rights Council (HRC), which promotes global standards, and treaty-specific committees, such as the Human Rights Committee, that oversee compliance with covenants like the ICCPR, all working to uphold international human rights laws. These bodies investigate abuses, educate the public, and advise governments, strengthening human rights frameworks nationally and internationally.⁶³

The Commission of Human rights of Somalia are one of the eleven (11) independent national bodies established under Chapter 10 of Somalia's 2012 Provisional Constitution. Its core mandates include promoting respect for and a culture of human rights; advancing the protection, development, and realization of human rights; monitoring and assessing human rights practices within the Federal Republic of Somalia; and taking necessary measures to ensure effective remedies in cases of human rights violations.⁶⁴

A National Human Rights Institution is founded on the understanding that the mere existence of laws is insufficient to guarantee the effective enjoyment of individual rights within society. It is therefore established to strengthen the human rights framework by serving as a dedicated body for the promotion and protection of human rights. Such institutions are typically administrative in nature and do not exercise judicial or legislative authority, although some incorporate quasi-judicial functions. In certain contexts, their establishment is grounded in constitutional provisions, while in others they are created through legislation or executive

⁶³ Newal Chaudhary, 'The Limits of Human Rights Oversight: Evaluating National Human Rights Commission (NHRC) Jurisdiction in Nepal' (2025), Human Rights Journal, Vol. 25, 126-145, available at file:///C:/Users/previ/Downloads/7.+NHRC+Jurisdiction_Final_A7_8_31.pdf.

⁶⁴ Ahmed Kheir Osman 'Imposing Written Exams for Somalia's Human Rights Commission: What justifies this Method?' (2025), SIDRA Institute: POLICY BRIEF 23, available at <https://sidrainstitute.org/wp-content/uploads/2025/07/SIDRA-Policy-Brief-Imposing-Written-Exams-for-Somalias-Human-Rights-Commission-What-justifies-this-Method-3.pdf>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

decrees. Although they may be institutionally linked to the executive or legislative branches, they are intended to operate independently and are not subject to subordination.⁶⁵

The Commission fulfills its mandate through various means, notably by receiving and investigating complaints of human rights violations. It further reviews government human rights policies and the implementation of ratified treaties in order to highlight shortcomings and propose corrective measures.

- e. Functions (Mandate) of the Somalia National Human Rights Commission under the Constitution
 - a) *Under Article 111B-Human Rights Commission* states that, the Constitution shall establish a Human Rights Commission mandated to promote respect for human rights and foster a culture of human rights; to advance the protection, development, and realization of human rights; and to monitor and evaluate the observance of human rights within the Federal Republic of Somalia.
 - b) In accordance with the Constitution, the Commission is empowered to investigate and report on human rights compliance, to take measures to secure appropriate remedies where violations occur, to conduct research, and to educate the public and state officials on international human rights standards.
 - c) The specific powers and functions of the Commission are to be provided for by legislation enacted under the Human Rights Commission Act. The Commission shall operate as an independent, impartial, and inclusive body and shall consist of no more than nine members.
- f. Functions of the Independent Human Rights Commission under Law No. 16 of 2016: *Under Article 5 of the Independent Human Rights Commission Law provides as follows; -*
 - a) Promoting and enhancing a culture based on awareness and respect for human rights values, in accordance with Islamic Sharia, the Federal Constitution, and the international human rights treaties to which Somalia is a party;
 - b) Ensuring that all government policies, systems, and laws comply with the human rights principles enshrined in the Federal Constitution and international human rights instruments;

⁶⁵ Paulo Sergio Pinheiro and David Carlos Baluarte, 'National Strategies- Human Rights Commissions, Ombudsmen, And National Action Plans' (2000) Human Development Report 2000 Background Paper, <https://hdr.undp.org/system/files/documents/paulosergiopinheiro.pdf>.

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

- c) Visiting places of detention, including prisons and remand facilities, as well as any other locations suspected of unlawful detention, for the purpose of assessing conditions and issuing appropriate recommendations regarding detainees and prisoners;
- d) Receiving complaints concerning human rights violations and investigating the responsible public or private entities, followed by issuing appropriate remedies for established violations;
- e) Investigating violations committed against vulnerable groups, including women, persons with disabilities, the elderly, children, and persons unlawfully associated with armed groups;
- f) Conducting general investigations and continuous monitoring of persistent or systematic human rights violations;
- g) Preparing and submitting reports to Parliament, regional and international human rights bodies, and other relevant institutions, including constitutional recommendations;
- h) Promoting and encouraging state institutions and private entities to respect, protect, and implement fundamental human rights principles;
- i) Cooperating and maintaining communication with organizations engaged in the protection and defense of human rights;
- j) Performing any other functions deemed necessary by the Commission for the promotion and protection of human rights, in accordance with the Federal Constitution; and
- k) Carrying out any additional duties assigned by the Federal Constitution or national laws and taking appropriate measures to advance the protection, promotion, and realization of human rights.

g. Powers of the Independent Human Rights Commission Under Article 6 of the Commission;-

In accordance with Article 41 and Article 111B of the Federal Constitution, the Independent Human Rights Commission shall have the following powers:

- a) To hear and determine complaints and matters relating to human rights through mechanisms of mediation, conciliation, and amicable settlement
- b) To lawfully access any information deemed necessary for the performance of its functions, including reports, written statements, documents, or any other relevant data held by individuals, institutions, or government offices; where access to such information so requires,

Protection of Human Rights in Somalia: Structural ...
(Ahmed Kheir Osman)

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

the Commission may seek a court order authorizing entry into any premises, land, or property for the purpose of obtaining materials, conducting investigations, making copies of documents, and ensuring the protection and security of information and property;

c) To investigate public institutions and privately owned entities in order to assess the extent to which they comply with and implement the constitutional principles of inclusiveness, balance, justice, and equal opportunity as provided under the Federal Constitution.

h. The Office of the Ombudsman

At first sight, Ombudsman institutions and Human Rights Commissions may seem largely similar, particularly as both are involved in receiving and investigating complaints, resulting in an apparent overlap in their functions. A Human Rights Commission primarily focuses on human rights norms and violations, often with a broad mandate that includes promotion, monitoring, education, reporting, and investigation. An Ombudsman, by contrast, is designed to address everyday maladministration and abuse of public power, offering a direct, accessible remedy for individuals affected by unfair government action even where a strict human rights violation may be difficult to prove.⁶⁶

In practice, many grievances suffered by citizens arise from poor administration rather than explicit human rights breaches. Without an Ombudsman, such complaints often fall into a gap between courts (which may be slow or inaccessible) and Human Rights Commissions (which may prioritize systemic or serious rights violations).⁶⁷

In Somalia, where courts continue to face constraints in capacity and institutional independence, the Ombudsman is intended to serve as an accessible, non-judicial mechanism for individual redress, complementing the broader mandate of the Human Rights Commission in promoting constitutional and international human rights standards. Although *Article 111J of the Constitution* mandates the creation of the Office of the Ombudsman to investigate rights violations, abuse of authority, and maladministration, the office remains unestablished due to the absence of the Judicial Service Commission, which is constitutionally required to recommend the Ombudsman's appointment.⁶⁸

⁶⁶ Marc Hertogh and Richard Kirkham, 'Research Handbook on the Ombudsman' (2018), Pages 576, <https://www.elgaronline.com/edcollbook/edcoll/9781786431240/9781786431240.xml>.

⁶⁷ Ibid

⁶⁸ Ibid

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Article 111J of the Constitution sets out the mandate and functions of the Ombudsman

- (a) Investigate complaints regarding allegations or outright violations against basic rights and freedoms, abuse of power, unfair behavior, mercilessness, lack of clemency, indiscipline or disrespect towards a person that lives in Somalia by an officer who works at the various levels of government, an apparently unfair behavior, or act in a corrupt manner, or a behavior by an officer deemed as illegal by a democratic society or regarded as mischief or injustice.
- (b) Investigate complaints in relation to the activities of the Public Service Commission of the government, administrative institutions of the government, and the defense and police forces whoever such complaints relate to, failure to equally align those services or fair recruitment among all people in those services or to administer those services fairly.
- (c) Take appropriate steps that the public calls for, to rectify or change items mentioned in earlier clauses through a fair, and appropriate process, which include, but are not limited to:
 - (i) Consultations and sacrifices among the people concerned, (ii) Reporting on the complaints and matters presented to the Ombudsman, and submit to the head of the offender, (iii) To forward the matter to the Attorney General; (v) Forward to the Attorney General a matter suspected to involve corruption.

4. Conclusion

Somalia's human rights protection framework contains strong constitutional and historical foundations, but its effectiveness is constrained by structural fragility and uneven institutional enforcement. The post-independence constitutional order (notably the 1960 Constitution's alignment with the 1948 Universal Declaration of Human Rights) reflected an early commitment to internationally recognized rights, while Islamic legal and ethical traditions have continued to shape understandings of dignity, justice, and social obligation. Yet prolonged insecurity, poverty, displacement, and fragmented federal governance have weakened the state's ability to provide security, welfare, and constitutional legality consistently conditions that turn constitutional rights into uneven realities across territory and population groups. Legally, the Provisional Constitution provides a comprehensive catalogue of rights, distinguishing between non-derogable guarantees (such as freedom from torture, slavery, and other core protections of dignity) and rights that may be limited only under strict legality, necessity, and proportionality requirements. However, the main gap is not the absence of constitutional language but the limited availability of credible remedies. Where courts face capacity constraints and perceptions of limited independence, Article 39's promise of accessible redress risks becoming formal rather

Protection of Human Rights in Somalia: Structural ...
(Ahmed Kheir Osman)

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

than effective, encouraging impunity and normalizing executive or security-driven measures that should otherwise be subject to rigorous judicial scrutiny. Institutionally, Somalia's design seeks to close this enforcement gap through independent oversight bodies, especially the National Human Rights Commission, which carries a broad mandate to promote, monitor, investigate, and recommend remedies for violations. The intended Office of the Ombudsman under Article 111J would complement this by offering a practical, low-cost avenue to challenge maladministration, abuse of authority, and unfair public conduct affecting everyday life. Yet the Ombudsman remains unimplemented because the appointment pathway depends on the Judicial Service Commission, which has not been formed. As a result, Somalia's human rights system continues to operate with a missing accountability pillar leaving many routine grievances to fall between overstretched courts and a Commission that may be pulled toward systemic priorities rather than rapid individual relief.

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(Ahmed Kheir Osman)

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