

## Somalia

Six Grave violations	International Data 2022	Outcomes of the research 2017-2023
Killing and Maiming of Children	712: 166 killings and 546 maiming (550 boys, 162 girls)	Killing were committed through small arms and light weapons (384), crossfire, indiscriminate shootings and targeted killings and explosives
.Recruitment or Use of Children as Soldiers	1,094 children (1,022 boys, 72 girls), as young as 8	from 2017 to 2018 2,300 cases reported in 2018 compared to 2,127 in the previous year. In total, 15,000 child soldiers are estimated in the territories under Al-Shabab's control
Sexual Violence against Children	221 children (2 boys, 219 girls)	Since 2017 local NGOs, operating in 6 internally displaced camps in and around Mogadishu received a more than 1600 complaints, 75% were related to incidents of gender-based violence, a significant number of which occur in conflict settings

Abduction of Children	694 children (639 boys, 55 girls)	30 individuals including children in the first months of 2023 by Al- Shabab
Attacks against Schools or Hospitals	44 attacks on schools (39) and hospitals (5)	Since 2022, over 1.7 million children have been deprived of educational opportunities
Denial of Humanitarian Access for Children	18	5 million children under the age of five, 1.8 million girls (ages five to 17), 1.8 million boys (ages five to 17) 18 cases in 2022

### *Challenges met during the research*

Typology	Challenges	Comment
Quantitative	Data collection	Addressing the difficulty of accessing local data, continuous and persistent monitoring becomes imperative in research endeavours. This ongoing commitment to monitoring ensures that data collection remains active and adaptable to evolving circumstances. By maintaining vigilance, researchers can gather timely and relevant information, allowing them to capture shifts in trends, identify emerging patterns, and address evolving challenges within local communities.

Qualitative	Participants scared to take part in interviews	Exercising general caution regarding testimonies is essential in any research, investigation, or decision-making process. Testimonies, while valuable sources of information, can be subjective and influenced by various factors such as memory, perception, personal biases, and external pressures.
Qualitative	Need for anonymity	In research involving sensitive topics or vulnerable populations, anonymity should indeed be considered a standard practice. Protecting the anonymity of participants helps ensure their safety, privacy, and confidentiality, particularly when disclosing sensitive information or sharing personal experiences.

### 1. Country Analysis

British Somaliland, to the north, gained independent on 26 June 1960, and the former Italian Somaliland followed five days later. On 1 July 1960, the two territories united to form the Somali Republic. A government was formed with Aden Abdullah Osman Daar as President, and Abdirashid Ali Shermarke as Prime Minister, later to become President (from 1967-1969). On 20 July 1961 and through a popular referendum, the Somali people ratified a new constitution. Somalia gained independence from foreign rule in 1960. Before colonization, Somalia was considered an affluent

nation, however with the establishment of the Suez-canal, more colonizers became interested in the country due to its location (Wauters, 2013).<sup>18</sup>

Somalia experienced a decades-long civil war resulting in a collapse of the central government. At least 6.7 million Somalis, almost half of Somalia's 17.1 million population, face acute food insecurity, with 300,000 expected to experience famine in 2023. More than half a million children suffer severe malnutrition, 173,000 more than during the 2011 famine. More than one million Somalis have been internally displaced due to the lack of food and water and seek to relocate to areas where they can access international humanitarian supplies. Compounded by global warming, drought has battered Somalia for years. Five consecutive rainy seasons failed to bring sufficient water, each having a more devastating impact

on agriculture. The impacts have been multifaceted and go beyond human starvation. Over three million livestock — three quarters of the country's total — have died. Livestock is not only essential for household survival, but also a key source of revenue for the Somali economy. While Somalia managed to walk back from the brink of famine in early 2023, more than four million people remain food insecure and in need of assistance. In October 2023, the country faced a further shock as torrential deyr (October to December) rains, due to the confirmed influence of the El Niño conditions and a positive Indian Ocean Dipole in the region, caused widespread flooding in the country. Over 1.2 million people were affected. Ongoing military operations and conflict continue to displace thousands of people every month (OCHA, 2023).

### 1.1. Conflict

The Somali conflict was triggered by the fall of President Said Barre regime on 27 January 1991. General Barre's dictatorship was synonymous with extreme brutality, suppression of opposition groups, both nationalistic and Islamic, and exacerbation of inter-clan rivalries. By 1988, the dissatisfaction with the government led to nationalist groups throughout the country, with Northern Somalia (modern-day Somaliland) leading the charge, to attack government and military posts, prompting the First Somali Civil war (1988-1991). The period 1991-1992 was marked by clan-based warfare, asset plundering, and a devastating famine. The chaos resulted in the declaration of independence by Somaliland in 1991, though still not recognised by any nation in the world, and Somalia maintains its authority over the northern territory. In 1998, the Puntland region in Northern Somalia declared partial autonomy, meaning that they reserve the right to operate independently but still can be part of the Federal Government of Somalia.

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18 For this section see also: Wam,P.(2005)*Conflict in Somalia: Drivers and dynamics (English)*. Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/655761468332449283/Conflict-in-Somalia-Drivers-and-dynamics>; Fearon, J. D. (2004). "Why Do Some Civil Wars Last So Much Longer Than Others?". *Journal of Peace Research*. 41 (3): 275–301; Robinson, C. (2016). "Revisiting the rise and fall of the Somali Armed Forces, 1960–2012". *Defense & Security Analysis*. 32 (3): 237–252; Chothia, F. (August 9, 2011). Could Somali famine deal a fatal blow to al-Shabab?. BBC; Human Rights Watch (December 23, 2020). *Somalia: Events of 2020*. [Online] Available at <https://www.hrw.org/world-report/2021/country-chapters/somalia>; Musse, A. M., Rosemaliza A. R, and Zairy Z. "The Emergence of Islamic Banks in Somalia in the Post-Conflict Era: Prospects and Challenges." *Indian-Pacific Journal of Accounting and Finance* 3, no. 1 (January 1, 2019): 41–49. <http://dx.doi.org/10.52962/ipjaf.2019.3.1.64>; Arthur, Jo. "Language at the margins." *Language Problems and Language Planning* 28, no. 3 (November 5, 2004): 217–40. <http://dx.doi.org/10.1075/lplp.28.3.01art>.

In the early 2000s, there were renewed efforts to rebuild the Somali central government, which involved a dual state-building and peace-building process. The renewed efforts, spearheaded by the regional institution Intergovernmental Authority in Development (IGAD), led to the signing of the Arta Declaration in 2000 which addressed representation in government, a significant obstacle to the Somali peace process. The declaration asserted that all future Somali governments would use the 4:5 formula which states that the four main clans – Dorad, Hawiye, Dir (includes the Isaaq) and Rahanweym (Digil-Mirifle) will have equal representation in government while the other smaller clans will share the rest of the representation. Though Somali politicians, with the support of the regional institutions, attempted to address clan grievances, the transitional governments – the Transitional National Government and Assembly (TNG/A) (2000-2004) and Transitional Federal Government/Parliament (TFG/P) (2004-2012) – were plagued with inefficiency, infighting and corruption. Additionally, the insecurity in the country forced the President, Cabinet and the majority of the Members of Parliament to operate from Kenya, which contributed to their inability to govern. In February 2007, the United Nations Security Council authorised the African Union to deploy a peacekeeping mission (AMISON) in support of Somalia's Transitory Federal Institutions.

In 2006, the Harakat Shabaab al-Mujahidin - commonly known as al-Shabaab - a clan-based insurgent and terrorist group, emerged and took over most of southern Somalia in the second half of 2006. Despite the group's defeat by Somali and Ethiopian forces in 2007, al-Shabaab has continued its violent insurgency in southern and central Somalia. The group has exerted temporary and, at times, sustained control over strategic locations in those areas by recruiting, sometimes forcibly, regional sub-clans and their militias, using guerrilla warfare and terrorist tactics against the Fed-

eral Government, AMISOM peacekeepers, and nongovernmental aid organizations. Since 2011, however, pressure from AMISOM and Ethiopian forces has largely degraded al-Shabaab's control, especially in Mogadishu but also in other key regions of the country, and conflict among senior leaders has exacerbated fractures within the group. The 2010–11 battle of Mogadishu began when al-Shabaab militants launched an offensive to capture the city. The battle soon swung in favour of government forces, who were able to drive the militant group out by 11 October 2011.

Despite the challenges brought upon by al-Shabaab, the TFG/P managed to create a new constitution which effectively led to the first election since 1969. On 20 August 2012, the Federal Government of Somalia (FGS) was born under the leadership of Hassan Sheikh Mohamed (2012 -2016). Similar to the transitional governments, the FGS aimed to stabilise the country through building a national consensus between the government and the newly defined regional states – Jubaland, Puntland, HirShabelle, South West, Galmudug and Somaliland. Each regional state, which is representative of the traditional clan and sub-clan territorial boundaries, was tasked with creating spaces where clan rivalries and grievances could be addressed. On 3 June 2012, the United Nations Mission in Somalia (UNSOM) was established via a Security Council Resolution.

Fights between the Government and al-Shabaab continued between 2012 and 2016, leading to an increase of U.S. involvement and military intervention in 2017.

In February 2021, following President Mohamed Abdullahi Mohamed's term expiration, fightings broke out in Mogadishu. In May 2021, negotiations led to an agreement to hold elections within 60 days, with the presidential election eventually taking place on 15 May 2022. Hassan Sheikh Mohamud was declared the new president in a peaceful transition of power.

The 14-year-long AMISOM mission concluded in March 2022, replaced by the Somali-led African Union Transition Mission in Somalia (ATMIS). In 2023, fighting erupted between Khatumo State and Somaliland, leading to the Las Anod conflict.

### *1.2. Post-conflict situation*

The intriguing paradox evident in Somalia's conflict-ridden history lies in the dual nature of certain factors that both contribute to armed conflicts and play a role in managing, ending, or preventing them. Take, for instance, clannism and clan divisions. While they have been a primary source of conflict, exploited by political leaders to stoke tensions and mobilize militias, they simultaneously serve as integral components in conflict resolution. Traditional clan elders mediate conflicts, clan-based customary law forms the basis for settlements, and blood-payment groups grounded in clan structures act as deterrents to violence.

Similarly, the central state, often considered a potential source of rule of law and peaceful resource allocation, has, paradoxically, been a historical source of violence and predation in Somalia. The collapse of the state in 1991 led to power struggles, contributing to the emergence of armed factions. The ongoing effort to rebuild state institutions reflects a recognition of the potential for a functioning state to bring stability. Economic interests, too, present a complex dynamic. While they can fuel conflict through the emergence of war economies perpetuating violence and lawlessness, they can also act as drivers for peace, stability, and the rule of law. Competing economic interests may lead to clashes, but economic development and investment can contribute to overall societal well-being, creating an environment less conducive to conflict. The role of external actors adds another layer to this complexity. Whether neighbouring countries or international or-

ganizations, their involvement can either exacerbate or mitigate conflicts. Historical interventions and geopolitical interests have sometimes contributed to instability, while peacekeeping efforts and diplomatic initiatives have aimed at conflict resolution. Identity, encompassing ethnic and religious affiliations, serves as both a source of mobilization for conflict and a basis for community resilience.

The challenge in conflict analysis for Somalia lies in discerning the circumstances under which these variables serve as escalators or de-escalators of violence. This requires a deep understanding of the historical, cultural, and socio-economic context, emphasizing the importance of addressing root causes and engaging with local actors in conflict resolution and peacebuilding efforts. The delicate balance between these factors poses a significant challenge for both analysts and policymakers in navigating the complex landscape of Somali conflicts.

Somalia is making progress towards reaching the Heavily Indebted Poor Countries (HIPC) Initiative Completion Point, which will bring about full and irrevocable debt relief. The political landscape seems to be evolving, offering new opportunities for Somalia, especially with the potential accession to the East African Community. This integration could bring about benefits in terms of trade and regional cooperation (World Bank 2023). Additionally, the need for Somalia to transition from humanitarian aid to sustainable development approaches is crucial for long-term stability. The information about the severe drought conditions and the resulting humanitarian crisis is concerning. It's positive that grants, safety net programs, and remittances are helping to alleviate the situation, but addressing the root causes of these challenges is essential for sustained progress. Economic development efforts, including investments in key sectors like energy, ports, education, and health, seem promising. However, the impact of external fac-

tors such as drought, food prices, and remittance fluctuations on economic growth underscores the importance of building resilience to shocks. The projected GDP growth rates for the coming years indicate a gradual recovery, but it's clear that implementing reforms and fostering an environment for inclusive, private-sector-led growth will be critical for sustained development (World Bank, 2023). Strengthening institutions and rebuilding human capital are fundamental components of this process. Overall, Somalia's journey towards economic stability and resilience is multifaceted, involving not only addressing immediate challenges but also implementing long-term reforms for sustainable development. Continued international support and collaboration will likely play a crucial role in achieving these goals.

### *1.3. Social, cultural and religious aspects*

Somalia, with its rich cultural tapestry and deep-rooted traditions, is inherently shaped by a complex interplay of social and religious dynamics. At the heart of Somali society lies a communal ethos that transcends individual identities. The extended family, or "*qabill*", forms the cornerstone of social structure, providing a robust support system and a sense of belonging. This intricate web of familial ties often extends beyond blood relations, encompassing a broader community affiliation that guides interpersonal relations and decision-making. Hospitality, a revered tradition known as "*diyaar*", underscores the importance of welcoming guests with open arms. The nomadic heritage, although challenged by modernity, still resonates in the nomadic lifestyle prevalent in rural areas. This lifestyle not only shapes economic activities but also contributes to a distinct nomadic ethos, fostering resilience and adaptability in the face of challenges.

The delicate balance between tradition and modernity, com-

pounded by political instability and conflict, poses challenges to Somalia's social fabric. The impact of the extended civil unrest has strained social ties and tested the resilience of familial bonds. Additionally, the presence of restrictive laws, such as those criminalizing homosexuality and imposing strict penalties for drug-related offenses, contributes to a complex social environment.

Religiously motivated extremism, exemplified by Al-Shabaab's influence, introduces tensions within the religious landscape. The coexistence of diverse religious practices, from Sufi rituals to Sunni traditions, faces challenges in the wake of radical interpretations seeking dominance.

The Somali culture is a deep rooted communal and conservative culture. It places a strong emphasis on family. The family structure may take on an extended structure, as such there is a sense of collective responsibility in the well-being of children. Elders hold a significant role and their wisdom and value is highly valued. Islam, a guiding force in the lives of the majority, permeates every facet of Somali existence. While the Federal Government has embraced Shari'a law, its full implementation remains a work in progress. The religious landscape, however, is not monolithic. The influence of Al-Shabaab and other insurgent groups introduces a more radical interpretation of Islam, challenging the nuanced coexistence of traditional Sufi practices and mainstream Sunni Islam.

The continuous conflicts and unrest within the state together with certain historical norms, such as early marriages and female genital mutilation (FGM) have created a great contribution to violence against children. This includes the fore-mentioned together with forced marriage and gender-based violence. The continued fighting also makes children susceptible to recruitment by armed forces and kidnappings among others.



#### *1.4. Implementation of human rights*

Significant human rights issues include reports of unlawful or arbitrary killings, including extrajudicial killings; torture or cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest or detention; political prisoners or detainees; serious problems with the independence of the judiciary; serious abuses in a conflict, including reportedly unlawful or widespread civilian deaths or harm, enforced disappearances or abductions, torture and physical abuses or punishment, and unlawful recruitment or use of child soldiers; serious restrictions on freedom of expression and media, including violence or threats of violence against journalists, unjustified arrests or prosecutions of journalists, censorship, and the enforcement of criminal libel laws; substantial interference with the freedom of peaceful assembly and freedom of association; inability of citizens to change their government peacefully through free and fair elections; serious and unreasonable restrictions on political participation; serious government corruption; lack of investigation of and accountability for gender-based violence; crimes involving violence or threats of violence targeting members of national/racial/ethnic minority groups; existence of laws criminalizing consensual same-sex sexual conduct between adults, although information regarding their enforcement was unclear; and existence of the worst forms of child labour. Impunity generally remained the norm. Government authorities took some steps to prosecute and punish officials who committed abuses, particularly military and police personnel.

Despite some efforts to prosecute officials, particularly in the military and police, a prevailing sense of impunity underscored the need for continued measures to address human rights concerns. Significant challenges with impunity persist, with at least 613 ci-

vilians killed and 948 injured as of 14 November 2022, marking the highest numbers since 2017. Approximately 94 % of these incidents were attributed to al-Shabaab.

The law criminalizes rape of a woman and provides penalties of five to 15 years in prison for violations. There is no law regarding rape of a man. Military court penalties for rape include death sentences. The government did not effectively enforce the law. There are no federal laws against spousal violence, including rape. Gender-based violence, including rape, continued to affect women and girls when going to collect water, going to the market, and cultivating fields. Dominant patterns included the abduction of women and girls for forced marriage and rape, perpetrated primarily by nonstate armed groups, and incidents of rape and gang rape committed by state agents, militias associated with clans, and unidentified armed men. Police were reluctant to investigate and sometimes asked survivors to do the investigative work for their own cases. Some survivors of rape were forced to marry perpetrators. Corruption within the government remains a serious issue, as well as accountability particularly for gender-based violence.

The United Nations recorded hundreds of instances of gender-based violence, including sexual violence against women and girls by unidentified armed men, clan militiamen, al-Shabaab elements, and members of state security forces. The *2020 Somali Health and Demographic Survey (SHDS)*, the most recent data source available, noted that cases of gender-based violence were underreported due to a “culture of silence” Domestic and sexual violence against women remained serious problems despite laws prohibiting any form of violence against women. Intimate partner violence and coercion remained a problem, since 59 percent of respondents to the SHDS said husbands committed the largest number of violent acts against women in the community, and 12 percent of married women reported spousal abuse within the prior

year. While both sharia and customary law address the resolution of family disputes, women were not included in the decision-making process. Exposure to domestic violence is also significantly heightened in the context of displacement and socioeconomic destitution. Child abuse and rape of children are serious problems, and there is no law or reported efforts by the federal government or regional governments to combat child abuse. Children remain the main victims of societal violence. The practice of *asi walid*, whereby parents place their children in *dhaqan celis* (“returning to (Somali) culture”) boarding schools, other institutions, and sometimes prison for disciplinary purposes and without any legal procedure, continued throughout the country. Physical abuse and sexual assault in these facilities were common (US Dep. State, Country Report on Human Rights Practices, 2023).

The government together with international organizations such as UNICEF aims to enhance dialogue and understanding of the need for protection of children’s rights. In a bid to improve the social conditions of children, the government is in the process of implementing policies to curb gender-based violence and sexual violence against women and children. In addition through sensitization campaigns on child rights at homes, schools, communities and the judiciary, child participation is being encouraged to give them a voice. Awareness campaigns against female genital mutilation (FGM), early marriages and the importance to educate girls have increased. Alternative livelihood programmes have been created for persons who earn from FGM. Water, Sanitation, Healthcare Waste management (WASH facilities) are also being availed in camps and different communities where displaced families reside. In many of these areas children face sexual violence as they fetch water or firewood among others. Rehabilitation and reintegration centres have also been established in Somalia to provide training, education to families and communities. Psycho-social

support local laws, reflective of Somalia's predominantly Muslim population, demand respect for Islamic traditions and customs. and religious leaders are well respected in the community. Therefore, the Ministry of justice has engaged with them on issues related to practices affecting children’s rights such as child marriage.

## 2. Level of adequacy to international law

Article 5(2) of the Constitution provides that the laws to be enacted shall be in conformity with Sharia principles. Under Article 21(2), the provisions within the Constitution shall be interpreted in conformity with the international conventions on human rights. This resulted into a “hybrid legal system in the country” of civil law, sharia law and customary law.

Despite the Constitution does not have explicit clause on mode of adoption of international law into the domestic system, the legal practice acknowledges international laws signed and ratified as a part of municipal law.

Somalia is party to the following international instruments:

- International Covenant on Civil and Political Rights (CCPR);
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- International Covenant on Economic, Social and Cultural Rights (CESCR);
- Convention on the Rights of the Child (CRC);
- Convention on the Rights of Persons with Disabilities (CRPD);
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)

(U.N. Treaty Body Database, 2023).



### 3. National legislation

Historically, Somalia followed customary law and Islamic law, including the application of Sharia law for domestic matters even during the colonized administration (Wauters, 2013).

After attaining independence in 1960, Somalia relied on English common law, Italian law, Islamic Sharia (religious law), and Somali customary law. The greatest concern at the time was how to amalgamate the respective laws into one judicial system. Despite the decision to unify the legal frameworks at a national level, local laws continued to apply. The Federal Government of Somalia has adopted Shari'a law but has yet to implement it nationwide. On the contrary, Al-Shabaab and other insurgent groups often hold extreme views on the enforcement of said law. However, local laws are influenced by the predominantly Muslim population. Laws prohibit Muslims from converting to another religion and prohibit the propagation of any religion other than Islam. Homosexual acts are illegal, and public displays of affection should be avoided. Drug and alcohol offenses, including consumption, possession, and trafficking, are treated seriously and punishable by law. In Somaliland, punishments for such offenses were tripled in January 2021, potentially leading to a lengthy prison sentence without bail.

While khat<sup>19</sup> is legal in Somalia, taking it out of the country is an offense. Customs officials may search bags at airports, and possession of khat could result in criminal prosecution.

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19 Khat is a stimulant drug, which means it speeds up the messages between the brain and the body. Chewing khat is part of some social traditions in parts of the Middle East, such as Saudi Arabia and Yemen, and in Eastern Africa, such as Somalia. The buds and leaves of the khat plant (*Catha edulis*) are chewed for stimulant and euphoric effects, and traditionally have been used for medicinal purposes as well as recreationally.

Despite the international commitments that the Somali government has adopted by ratifying international conventions, the country faces significant human rights challenges, as evidenced by reports pointing to unlawful or arbitrary killings, including extrajudicial actions. The cabinet members of the Federal Government took a noteworthy step by approving, on 10 August 2023, the Children's Rights Act and, on 17 August 2023, the Juvenile Justice Bill, signaling a significant move toward safeguarding the rights of children. The recent legislative initiatives underscore the commitment to harmonize the national legal framework with global norms, particularly those outlined in the Convention on the Rights of the Child, which Somalia ratified in 2015. The Child Rights Bill is designed to guarantee that every child enjoys essential rights, including access to education, healthcare, protection from exploitation, and a supportive environment. The legislation, referred to as the "Sharciga Xaquuqda Soomaaliyeed", is in alignment with the principles outlined in the CRC. This act serves as the cornerstone for the protection of children's rights, explicitly affirming the rights to survival, education, and overall protection. Concurrently, the Juvenile Justice Bill outlines provisions for the equitable and child-sensitive treatment of youngsters entangled in legal conflicts. It aims to afford them protection, rehabilitation, and a structured pathway for reintegration into society. The legislation establishes clear legal procedures governing the arrest, custody, prosecution, rehabilitation, and penalties applicable to juvenile offenders.

In a bid to prevent violence against children, the government has established a Labour Inspectorate wherein labour inspectors have been hired and trained to fight child labour.

A number of legislative acts are awaiting enactment such as sexual offences Bill, the Anti FGM Bill, Disability Bill, Juvenile Justice Bill all of which are in the best interest of children.

#### 4. Judicial System

The formal justice system in Somalia traces its origins back to the colonial era when Britain controlled the northern part of the country (Somaliland) and Italy controlled the south. Although both systems allowed Somalis to use sharia law and the customary Xeer in family matters (i.e., divorce, inheritance), other cases were subject to statutory courts directly under the control of the colonial authorities. Notwithstanding the inherent differences between the British Common Law used in Somaliland and the Italian Civil and Penal Code applied in the south, the two colonial authorities have impacted the post-independence justice system in Somalia in three fundamental ways: first, both have established a secular, western law and codified its supremacy for criminal matters; second, both have allowed the Somali customary system of Xeer<sup>2</sup> to remain largely intact insofar as its application does not pose a threat to public safety; and third, and perhaps most importantly, the centrality of Shariah law to the judicial system was left intact.

Like the rest of the state architecture, Somalia's justice system crumbled under the weight of the civil war that began in 1991, shortly after Siyad Barre was removed from power. The law of the jungle prevailed across most of the country, although clans continued to practice the traditional Xeer system to settle localized disputes. The conflict has greatly disrupted the functioning of the judiciary damaging infrastructure and causing displacement of judges. The lack of resources for the judiciary has resulted in limited access to justice, lack of timely justice of protection of human rights.

In early 2009, concrete steps were taken to rebuild the country's justice system for the first time since the civil war with the creation, on an interim basis, of the Judicial Services Commission

(JSC), a body responsible for overseeing the justice system, subsequently dismantled in 2012. In 2014, a new JSC was created.

Since the gain of independence, Somalia has made efforts to build and reform its judicial system to align with democratic principles and the rule of law. Despite some reforms, the formal justice system in Somalia is broken at the core, depriving equitable access to justice for millions of citizens. More than 10 years with no judicial system (1990- 2000) followed by 20 years of weak statutory courts (2000-2020) have had a profoundly deleterious impact on the nation's deeply decentralized judicial branch. As a result, a buffet of justice systems and alternative dispute mechanisms have flourished across the country, leading citizens to shop for the most favourable outcomes. This is compounded by a deep contestation over the interpretation of the provisional constitution and the ambiguous framework to establish the two most important judicial institutions: the Judicial Services Commission (JSC) and the Constitutional Court of Somalia (CCoS). The federal parliament has yet to formally federalize the judicial branch as stipulated by the provisional The elasticity and ambiguity of the Provisional Constitution of Somalia are primary features of the many challenges confronting the structure of the justice system. Article 105 (2) says that the "judicial structure shall be regulated by a law enacted by parliament."<sup>42</sup> More than eight years after the constitution was drafted, the federal parliament has yet to enact laws clarifying the precise structure of the judicial branch, especially in view of the federal dispensation. And in the absence of that important legislation, the courts in the five federal member states and the Benadir Regional Administration (BRA) have adopted different structures that align with their sociopolitical realities. Most of the five member states and Benadir use a three-tiered justice system inherited from the Siyad Barre regime. The Court of First Instance (CFI) is usually located at the lowest administrative division, which is the

district level. In most states, the CFI deals with routine civil and minor criminal cases. Above that is the Appeals Court, which is typically located at the capital of the province (region). This court deals with the cases that are escalated by the CFI due to their complexity and scope. On top of that pyramid is the State Supreme Court (SSC), which is the highest court in the FMS. Among other things, it adjudicates serious crimes (such as capital and rape cases) and acts as the constitutional court at the state level should there be a dispute between government institutions (Heritage Institute, 2021).

The judicial system faces several challenges that hinder its efficiency and effectiveness, including ongoing conflict, untrained and under-qualified personnel; lack of independence of the judiciary, absence of legal reform, lack of personnel equipment and resources, and limited government control in some regions. The judiciary suffers from endemic corruption coupled with systemic mismanagement. Against this background, for centuries, Somalis used the traditional Xeer system as a dispute resolution mechanism. Since the formation of the modern state in 1960, Xeer was recognized as an alternative dispute resolution (ADR) mechanism. Xeer is inherently based on Shariah law jurisprudence but it is enhanced with social norms that do not contradict the basic tenets of Islam. The rise of traditional dispute resolution mechanism can be attributed to deepening public mistrust of the formal justice system. A review by the World Bank found that the formal court system is perceived as expensive, inaccessible and prone to manipulation, with Somalis relying primarily on traditional or clan-based forums to resolve disputes. Traditional elders of the clan often litigate cases through the Xeer system and oversee its enforcement. Many Somalis find the Xeer system easy to access, simple to navigate and, most importantly, expeditious in its judgments (Heritage Institute, 2021).

#### *4.1. Al-Shabaab courts*

In the absence of the established rule of law, conventional mechanisms, such as reconciliation processes based on clan affiliations, are frequently used for the purpose of resolving disputes and conflicts (Mohamed, 2017). These mechanisms could prioritize restorative justice principles, with a particular emphasis on the reparation of harm and the restoration of relationships. This approach is in line with the overarching objective of reintegrating children back into their respective communities (Abdullahi et al., 2020). Even in areas officially controlled by the government, Somalia's justice system is as dysfunctional as the government itself. Corrupt, fractured, and lacking the power to enforce its decisions, the judicial system rarely provides justice. In the absence of a functioning state judicial system, it is not uncommon for citizens to turn to other forms of 'justice'.

By combining Xeer, the traditional legal system of Somalia, with Sharia law, al-Shabaab has established a network of courts referred to as "shadow courts" throughout the country (Rollins, 2023). These courts, dealing with a range of disputes, have become an alternative justice system in the absence of an effective government-controlled judiciary. Al-Shabaab addresses various justice needs, including disputes over natural resources, commercial disagreements, clan discrimination accusations, land disputes, extortion, corruption, and unlawful arrests.

Al-Shabaab has emerged as a quasi-judicial authority, not necessarily because the public supports the terrorist group, but due to the absence of viable alternatives. A lack of trust in the government's judicial system, characterized by lengthy processes, backlogs, and high costs, has driven some Somalis to seek justice from Al-Shabaab. Many perceive Al-Shabaab's courts as neutral and unbiased, offering a free platform for arbitration. Individuals from minority

clans, wary of discrimination in government courts, are drawn to Al-Shabaab's promise of neutrality. Fear of reprisals and lack of powerful allies in government courts further push minorities towards seeking justice from Al-Shabaab.

Despite its violent and draconian punishments, Al-Shabaab's courts enforce decisions effectively, often through threats and acts of violence. The government's courts, in contrast, struggle to enforce their rulings. Al-Shabaab's use of intimidation, public executions, and amputations instils fear and ensures compliance. While Al-Shabaab has gained a reputation for lower corruption levels and perceived impartiality, it remains a violent and radical entity. In 2021 alone, the group was responsible for over 550 civilian deaths, and it faces accusations of crimes against humanity, child soldier recruitment, and exploitation of those under its control. Despite these atrocities, Al-Shabaab's reputation for lower corruption and lack of bias continues to earn it respect in comparison to government courts. This dynamic underscores the complex and challenging situation in Somalia, where an insurgent group is viewed by some as a more reliable source of justice than the official government institutions. Aweys Shaikh Abdullah a judge in a regional court in Somalia noted that many Somalis found that al-Shabaab court are better as they have less court fees and higher chances of enforcing their decisions unlike state courts. The interior minister Ahmed Moalim Fiqi made a similar comment indicating the state's goal to close al-Shabaab shadow courts by 2024 (Dhaysane, 2022).

## 5. Crimes against and affecting children: quantitative and qualitative results

The armed conflict had devastating consequences for children, leaving a profound and lasting impact on their lives. One of the

most alarming aspects is the recruitment and use of children by various armed groups, including Al-Shabaab, regional forces, clan militias, government security forces, and others. The involvement of children in combat, support roles, and other unknown purposes is a grave violation of their rights, exposing them to physical and psychological harm.

The indiscriminate violence perpetrated by different actors in the conflict has led to the killing and maiming of numerous children. Unidentified perpetrators, Al-Shabaab, government security forces, clan militias, and regional forces are among those responsible for the tragic casualties. The use of small arms, light weapons, explosive ordnance, and other means of violence further exacerbates the risks faced by children caught in the crossfire.

Moreover, the conflict disrupts essential services, including education and healthcare, severely impacting the overall well-being of children. Access to education is compromised as schools become targets or are forced to close due to the insecurity. The lack of proper healthcare facilities exacerbates the challenges, especially in times of crises such as the COVID-19 pandemic, where vulnerabilities are heightened. Children are not only direct victims of violence but also face the risk of abduction, sexual violence, and other forms of exploitation. The pervasive climate of fear and insecurity hampers their ability to lead normal lives, robbing them of their childhood and leaving a lasting imprint on their mental and emotional well-being.

Efforts to address these challenges are impeded by the overall fragility of the justice system and the difficulty in holding perpetrators accountable. The need for immediate and sustained international attention to the plight of children in Somalia is critical. This includes demanding that all parties adhere to international humanitarian and human rights laws, cease all violations against children, and release those within their ranks. The Somali govern-

ment must strengthen accountability, enact relevant legislation, and collaborate with international bodies to protect the rights of children affected by the conflict.

In conclusion, the armed conflict in Somalia casts a long and dark shadow over the lives of children, compromising their safety, education, and overall well-being. Urgent and coordinated efforts are imperative to mitigate the impact of the conflict on Somalia's youngest and most vulnerable population, ensuring they have the opportunity to rebuild their lives and contribute positively to the future of their nation. The United Nations confirmed that in Somalia there was a total of 2,783 grave violations against 2,282 children (1,810 boys, 472 girls), including 431 children who were victims of multiple violations. In addition, five violations that had occurred in 2021 were verified in 2022 (UNGA SG, 2023).

### *5.1. Killing and Maiming*

The UN reported in 2022 casualties of 712 children (550 boys, 162 girls) resulting from killing (166) and maiming (546) were attributed to various entities. Unidentified perpetrators were responsible for 254 cases, Al-Shabaab for 223, government security forces for 90 (including Somali National Army, Somali Police Force, and National Intelligence and Security Agency), clan militias for 73, regional forces for 59 (including Puntland police, Puntland forces, Jubbaland forces, Jubbaland police, Hirshabelle police, the Puntland Maritime Police Force, and South-West forces), Da'esh for 5, ASWJ for 4, AMISOM for 3, and the Ethiopian Liyu Police for 1. The primary causes of these casualties were small arms and light weapons (384), involving crossfire, indiscriminate shootings, and targeted killings, as well as explosive ordnance (276).

The main causes were small arms and light weapons (384), cross-fire, indiscriminate shootings and targeted killings and explosives (276) (UNGA SG, 2023).

### *5.2. Recruitment or Use of Children*

The experience of children becoming soldiers is channelled through the recruitment of children that are used as sex slaves, porters, cooks, fighters and spies (UNICEF, 2023). In Somalia, recruitment is conducted by different groups such as Alshabab, Government Security Forces, Clan Militias, Somali National Army among others (UN 2023).

The recruitment of children by armed groups showed an unsettling increase from 2017 to 2018, with 2,300 cases reported in 2018 compared to 2,127 in the previous year (The Coalition of Somalia Human Rights Defenders CSHRDs, 2018). Alarmingly, armed groups often employed coercion tactics, pressuring elders, teachers, and parents to provide children for recruitment under threat of reprisal. Consequently, numerous children, often unaccompanied, fled their homes to escape forced recruitment. Al-Shabab members subject girls to forced marriages in the territories under their control that includes many regions in central and southern Somalia and boys are forcefully trained as child soldiers (The Coalition of Somalia Human Rights Defenders CSHRDs, 2018). Parents that oppose orders of child recruitment are being killed or detained and tortured indefinitely. The research could confirm that there are estimated 15,000 child soldiers in the territories under Al-Shabab's control.

The UN reported that in 2020 in total, 1,094 children, comprising 1,022 boys and 72 girls, with some as young as 8 years old, were confirmed to have been recruited and utilized by various entities. The breakdown includes Al-Shabaab (902), regional



forces from different areas (68), clan militias (65), government security forces (37), "community defense forces" (15), and Ahl al-Sunna wal-Jama'a (ASWJ) (7). These children were involved in different capacities, such as combat (101), support roles (146), and for purposes that remain unknown (847). This distressing reality underscores the multifaceted and pervasive nature of child recruitment and use in conflict scenarios within Somalia. Boys were more exposed to recruitment with a total of 1,022. Girls on the other hand totalled to 72.

The above were recruited in different armed forces (UNGA SG, 2023).

### *5.3. Sexual violence*

Legal Action Worldwide (LAW), operating in six internally displaced camps in and around Mogadishu since 2017, has received over 1600 complaints, with 75% related to incidents of gender-based violence, a significant portion of which occurs in conflict settings. In 2022, the United Nations reported 340 cases of conflict-related sexual violence, primarily attributed to clan militias and Al-Shabaab. Rape and attempted rape were the most reported forms of sexual violence. Reports of sexual violence have notably increased compared to the previous reporting period, fuelled by heightened clashes, and are likely underreported. Among the sexual offences: rape, attempted rape and forced marriage. This outcome is in line with the UN report that has ascertained that in 2022 sexual violence has been inflicted upon 221 children, with the majority being girls. The perpetrators include unidentified individuals, government security forces (such as the Somali National Army, Somali Police Force, and joint operations of the Somali National Army/National Intelligence and Security Agency), Al-Shabaab, clan militias, regional forces (including Jubbal-

and forces, Jubbaland police, Puntland police), the Ethiopian Liyu Police, and "community defence forces".

The cases involve different forms of abuse, including rape (146 cases), attempted rape (37 cases), and forced marriage (28 cases). This data underscores the critical need for comprehensive efforts to address and prevent such heinous acts, as well as to ensure accountability for those responsible. Protecting and prioritizing the well-being of children in conflict zones should be a primary concern for relevant authorities and international organizations.

### *5.4. Abduction*

Somalia reported the highest number of verified abduction cases in 2018, totalling 1,609 instances. This figure was nearly five times higher than the country with the second-highest number of cases, the Democratic Republic of the Congo, which reported 367 cases (The Coalition of Somalia Human Rights Defenders CSHRDs, n.d). In 2022, a grand total of 694 children (comprising 639 boys and 55 girls) fell victim to abduction, perpetrated by different actors such as Al-Shabaab (663 cases), clan militias (6 cases), government security forces (3 cases involving the Somali Police Force and the Somali National Army), and unidentified armed elements (22 cases) (UN 2023). The abductions were primarily motivated by recruitment and utilization purposes (334 cases), alleged association with opposing parties in the conflict (76 cases), and indoctrination and alleged recruitment (69 cases). A portion of the abducted children managed to escape or were released (144 cases).

The research reports that in June 2023 a string of abductions in the Daru Nima region has left residents deeply alarmed and fearful: 30 individuals, including children, were reportedly taken captive by al-Shabab. The research could not confirm the exact number of children. Following this, another wave of abductions occurred,



this time attributed to the Macawisley militia. Their actions mirrored those of al-Shabab, leading to further turmoil in the region. Allegedly, these subsequent kidnappings were a retaliatory move by members of the Macawisley militia, who claimed to have had family members abducted by al-Shabab. This situation highlights the intricate and volatile dynamics of the conflict, with different armed groups engaging in retaliatory actions and exacerbating the challenges faced by the local population.

#### *5.5. Attacks against schools or hospitals*

A total of 44 attacks on educational institutions (39) and medical facilities (5), including incidents involving protected individuals associated with schools and/or hospitals, were confirmed. These incidents were attributed to Al-Shabaab (40), clan militias (2), and unidentified perpetrators (2). The majority of these events involved the abduction, killing, or injury of protected individuals (30). Additionally, the United Nations verified one instance of Al-Shabaab using a school for military purposes.

This research indicated that, for reasons related to insecurity, 4.8 million children are not attending school. Since 2022, over 1.7 million children have been deprived of educational opportunities. This is a consequence of sudden displacements, reduced household income, and families facing the difficult choice between ensuring survival and sending their children to school. Unfortunately, it is frequently girls who bear the brunt of this situation, experiencing an abrupt end to their education at a young age.

#### *5.6. Denial of humanitarian access*

The highest number of attacks affecting aid workers recorded by Ahl al-Sunna wal-Jama'a (AWSJ) in 2020 were accounted for in

South Sudan, Syria, the Democratic Republic of Congo (DRC), Central African Republic (CAR), Mali, Ethiopia and Somalia and has a damaging effect on children in conflict areas such as Somalia as many ends up in starvation, (Watchlist, 2023).

The World Vision report (2023) noted that one of the results of COVID-19 on children was the closing of schools in most places including Somalia. In the closure of schools contributed to the increase in sexual and physical violence among girls and recruitment by armed forces among boys. The report also noted that there was an increase in child marriage and FGM though many of the cases were not reported.

The UN reported that in 2022 A total of 18 instances of denying humanitarian access were confirmed, involving clan militias (5), the Somali National Army (4), Al-Shabaab (4), joint actions by "Somaliland" security forces/unidentified armed elements (2), unidentified perpetrators (2), and the Southwest Police (1).

This research highlights that in 2023 approximately 8.25 million individuals, comprising 1.5 million children under the age of five, 1.8 million girls (ages five to 17), 1.8 million boys (ages five to 17), 1.3 million women, 1.4 million men, and 412,000 elderly individuals, are in need of humanitarian assistance.

## 6. Conclusion and Recommendations

The research shows that the situation of children demands urgent attention and concerted efforts from the international community. The alarming statistics of children being recruited, killed, abused and maimed underscore the gravity of the issue. Factors such as clan conflicts, political instability, military operations against al-Shabaab and the withdrawal of the African Union Transition Mission in Somalia contribute to heightened insecurity and instability.

The increased targeted attacks, military operations against non-state actors and resulting insecurity amplified difficulties with humanitarian access while heightening the risk of grave violations against children. Additionally, climate shocks and limited infrastructure compound the situation. Years of conflict and neglect have caused severe damage to roads and bridges, creating significant challenges in transporting, and distributing humanitarian aid efficiently. These infrastructural limitations particularly affect remote and inaccessible areas, making it even more arduous to provide assistance to those in need. Accountability remains a serious concern.

*Recommendations:*

- Improve adequacy to international law by ratifying the Optional Protocol on the involvement of children in armed conflict (OPAC) and the African Charter on the Rights and Welfare of the Child.
- Strengthen the judicial system by providing training and fight corruption at all levels.
- Create/Strengthen specialised services providing support to children through psychosocial support and counselling.
- Promote awareness about children's rights at both the community and national levels to educate people about the importance of protecting children. Campaigns should include trainings to traditional leaders and elders on gender-sensitive approaches to dispute resolution. Encourage the involvement of women and youth in these processes to ensure diverse perspectives and fair outcomes, particularly when dealing with cases involving children.
- Create and develop programs for the reintegration and rein-

sertion of children formerly part of armed groups into family and community.

- Collaborate with international organisations and NGOs with expertise in children to develop national plans fostering children's rights.

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