



# **Discussion Paper on Reform of the Somaliland Penal Code**

**December 2014**

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## Introduction

This is the Horizon Institute’s discussion paper on reform of the Somaliland Penal Code (“PC”). The objectives of the discussion paper are to outline the following:

1. Reasons for reform;
2. The relationship between the PC and other laws;
3. Recommendations for style and structure;
4. A consideration of the crimes and sentencing; and
5. Recommendations for the way forward.

The discussion paper is the result of a detailed analysis of the PC and a consideration of penal codes from other jurisdictions. It also incorporates views which emerged during a workshop held from 30 to 31 August 2014 (“Workshop”) organised by the Somaliland Law Reform Commission (“LRC”).<sup>1</sup> It is hoped that this discussion paper will form the basis of the LRC’s work in reviewing and updating the PC in collaboration with the Horizon Institute.

### 1. Reasons for Reform of the Penal Code

As discussed during the Workshop, many of the laws currently in force in Somaliland were inherited from Somaliland’s predecessor State, the Somali Republic. The core body of laws, such as the criminal and civil codes and procedures, were used during the Siad Barre regime, or in the case of the PC, as early as the British Colonial Administration. These antiquated laws have become a major hindrance to development within the Criminal Justice System and require reform.<sup>2</sup>

The current PC is based on the Italian Penal Code of 1930. It was initially drafted by the Italian Somalia “Court of Justice” in 1957 and finalised in 1962. It came into force in 1964, replacing the 1930 Italian Code, then applicable in Somalia, and the Indian Penal Code of 1860, which applied in Somaliland. It is, therefore, unsurprising that a code which came into being during Fascist rule, and which is based on outdated laws, does not sit comfortably with modern concepts of human rights and many tenets of international law. It is also inconsistent with many provisions of the Somaliland Constitution, which came into force in 2001, as well as principles of *Sharia*. Accordingly, there is a need for harmonisation between the PC and other laws.

In addition, the development of technology and the changing nature of crimes means that the current PC is unable to deal with new challenges facing the justice system. A PC must reflect the changing nature of society, both domestically and internationally, in order to remain relevant and to effectively and efficiently deliver justice. It must also adhere to international human rights principles to ensure fairness and retain credibility. Additionally, it is vital that

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<sup>1</sup> About 50 participants selected from government institutions, members of the two Houses of Parliament, Judiciary Sectors, Police Commissioners, traditional and religious leaders and civil society organisations, UNDP, UNODC, and international organisations were invited and attended the Workshop.

<sup>2</sup> Report of the Workshop on the Reform of the Penal Code hosted by the Somaliland Law Reform Commission in Association with Horizon Institute, 30 to 31 August 2014.

the PC is unambiguous and clearly written so that accused persons are aware of their rights and that cases are efficiently prosecuted.

These reasons, coupled with the current political will in Somaliland, means that the time is now ripe for reform of the PC.

## **2. Relationship with Other Laws**

### **2.1. The Somaliland Constitution and Fundamental Rights**

The Somaliland Constitution (“Constitution”) came into force in 2001. As set out in its Preamble, it is based on *Sharia* and the sanctity of human life through entrenchment of fundamental rights and individual freedoms. Article 5 (1) of the Constitution provides that Islam is the religion of the State and sub-Article (2) states that the “laws of the nation shall be grounded on and shall not be contrary to Islamic *Sharia*.” Accordingly, any review of the PC will need to ensure consistency with *Sharia*.

In addition, there are several fundamental rights enshrined in the Constitution, which are in line with international human rights law, and which are not necessarily reflected in the PC. Provisions which are particularly relevant when reviewing the PC are the following:

- (i) Equal rights and obligations for all citizens (Article 8 (1)).
- (ii) Care for the environment and combating damage of the environment (Article 18 (1)).
- (iii) The articles which relate to fundamental rights and freedoms shall be interpreted in a manner consistent with international conventions on human rights and international laws referred to in the Constitution (Article 21 (1)). It is, therefore, necessary to also consider international human rights law when reviewing the PC.
- (iv) Freedom of association (Article 23), particularly relevant to provisions in the PC which may be used to curtail political opposition.
- (v) The right to life and security of the person with the exception of the death penalty (Article 24).
- (vi) The presumption of innocence (Article 26 (3)).
- (vii) Sanctity of the home (Article 29).
- (viii) No person’s private communications shall be interfered with except where in accordance with a court order allowing their investigation, tracing or listening (Article 30), which is relevant to crimes such as unlawful surveillance.
- (ix) Freedom of public demonstration, expression of opinion, press and other media (Article 32). Many provisions in the PC currently have the potential of limiting free expression and media.
- (x) Freedom of belief (Article 33).
- (xi) Rights of women (Article 36), in particular, the Government shall legislate for the right of women to be free of practices which are contrary to *Sharia*, and which are injurious to their person and dignity (Article 36 (2)). This Article is particularly relevant to sexual offences, abortion, and “honour” crimes.

This discussion paper is written with the above rights in mind and, where relevant, makes recommendations in line with Constitutional guarantees, as well as international human rights law. With regard to the latter, particular consideration has been given to the International

Covenant on Civil and Political Rights (“ICCPR”) and the African Charter on Human and People’s Rights (“ACHPR”).

## 2.2. Traditional Mechanisms for Conflict Resolution

The formal justice system in Somaliland remains weak and many people still rely on traditional modes of conflict resolution including *Xeer* (the customary law) and *Sharia*.

*Xeer*:

*Xeer* is comprised of unwritten agreements or contracts, entered into between different types of clan groups. It can regulate issues ranging from inter-clan relations, to levels of compensation for different illegal acts, to the management of disputes. *Xeer* also provides for the collective payment of blood compensation (*diya*) for certain crimes, such as murder, assault, theft and rape. Notably, *Xeer* is a collective system, which unlike the formal justice system or *Sharia*, places responsibility for actions on the group rather than the individual. *Xeer* cases are adjudicated by clan elders.<sup>3</sup>

By looking at the primary objectives of *Xeer* and how it works, it should be considered how the PC can effectively operate alongside this customary system. Notably, *Xeer* is beneficial for a group to collectively assume responsibility for compensation payments and, therefore, can promote social cohesion. It is an efficient mechanism for regulating inter-clan affairs and maintaining stability.<sup>4</sup> However, it fails to provide adequate protection for vulnerable groups, such as women and children, and allows for harmful practices that are contrary to international human rights, *Sharia*, and the Somaliland Constitution. One approach could be to expressly exclude the application of *Xeer* to criminal cases, which arguably should only be dealt with by the formal justice system. The PC should also criminalise certain harmful customary practices.

In light of the continuing reliance on *Xeer* in Somaliland, any reform of the PC must consider the relationship between the two and ensure that criminal law takes precedence over certain cases.

*Sharia*:

Article 5(2) of the Constitution provides that laws shall not be contrary to *Sharia* Law. A number of Muslim countries such as Pakistan, Malaysia and the Maldives have managed to harmonise their criminal statutes with *Sharia*. Ensuring compatibility between the PC and *Sharia* is a priority for Somaliland. However, there is a lack of a dispassionate and academic examination of how this can be achieved in practice. Consulting the criminal codes of these countries and examining how they arrived at harmonisation, can provide insight and offer Somaliland lessons and best practices. For example, the University of Pennsylvania’s criminal law research group has published a comprehensive article on their experience of

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<sup>3</sup> IDLO’s “Enhancing Legal Empowerment, Working with Customary Justice Systems: Post-Conflict and Fragile States, Working Paper Series, Paper No. 2, Unlikely Allies: Working with Traditional Leaders to Reform Customary Law in Somalia” by Maria Vargas Simojoki, 1.1.2 citing J Gundel, The predicament of the Oday: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia, (2006) ii-iii; and Academy for Peace and Development, The Judicial System in Somaliland (2002) Academy for Peace and Development <<http://www.apdsomaliland.org/docs/judiciaryreport.pdf>> at 20 April 2011.

<sup>4</sup> Id.

drafting a penal code for the Maldives and also issued the draft code they developed for the Maldives with extensive commentary. A close study of the Maldivian experience will be instructive for Somaliland. Indeed, the drafters of the Maldivian Code intended it to be a model Islamic penal code striking a balance between adherence to *Sharia* and compliance with international norms.<sup>5</sup>

Currently, the PC has several provisions which are inconsistent with generally agreed principles of *Sharia*. Among these are the provisions dealing with sexual offences, abortion, and crimes relating to “honour”. Moreover, there is room for discussion on Islamic jurisprudence to ensure interpretations which are in line with international human rights norms.

#### *Specialist Criminal Laws:*

There is other legislation which will need to be taken into consideration when reviewing and amending the PC. Somaliland has drafted or enacted a number of specialist laws, such as the counter terrorism law, counter piracy law, the public order law, and a bill dealing with sexual offences (currently known as the Rape Act), among others. Drafters will have to reflect these legislative developments and advise on the interrelationship between the PC and other specialist instruments. It will be important to ensure harmonisation between these different laws.

#### *Recommendations:*

- Consider how the PC can operate alongside *Xeer*.
- Consider how provisions in the PC can ensure that it takes precedence over *Xeer*.
- Consider the criminalisation of certain harmful practices under *Xeer*.
- Review provisions of the PC in line with *Sharia*.
- Consider including a section in the PC which addresses its relationship with *Sharia*.
- Consider interpretations of *Sharia* in line with international human rights law.
- Identify other specialist criminal laws and ensure that the PC is consistent with these, or consider how they also require amendment to ensure harmonisation with the PC.
- Consider whether certain offences currently included in the PC should be dealt with in separate legislation.

### **3. Drafting: Language and Structure**

#### **3.1. Language**

The PC is drafted in English. A Somali translation of the PC is available, but it is unclear if it is an official translation or how widely accessible the Somali PC is to judges and prosecutors. Physical copies of the PC, in both Somali and English, are difficult to obtain.

#### *Recommendations:*

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<sup>5</sup> Final Report of the Maldivian Penal Law and Sentencing Codification Project, Draft Crimes and Sentencing Code, by Paul H Robinson, University of Pennsylvania Law School, Criminal Law Research Group (“Final Report of the Maldivian Penal Law”) available at <http://ssrn.com/abstract=1522222> .

- Consider whether the PC should be drafted in either, or both, Somali and English.
- If the PC is drafted in Somali and English, it will be necessary to ensure that there is consistency and common understanding of meaning of terms, offences, concepts and venalities in both versions.

### 3.2. Structure

#### *Introduction:*

The overall layout of a penal code can contribute to its effectiveness. There is a development in contemporary legislative drafting to split criminal codes into two parts: a general section, dealing with principles applicable to all offences; and a specific section, addressing the specific crimes. If key terms, such as intention, recklessness, negligence, inchoate offences, are defined in the general part, this simplifies the drafting of specific offences by avoiding repetition.<sup>6</sup>

#### *General Section:*

Currently, the PC is divided into three “Books” which deal with: (i) Offences in General; (ii) Crimes; and (iii) Contraventions. Its structure is not particularly user-friendly. For example, Book I, “Offences in General”, covers general principles such as non-retroactive application of law, jurisdiction, offences committed abroad, and extradition. It fulfils, in very basic terms, the principles commonly included in the general part of criminal codes. However, it could be reviewed and expanded, to incorporate additional general principles that are applicable to all crimes, such as:

- Method of interpretation;
- Presumption of innocence and burden of proof;
- Requirements of liability and elements of offences;
- Causation;
- Special rules on the criminal liability of children, corporations or businesses, and accomplices;
- Inchoate offences (for example, attempt, conspiracy, incitement);
- General defences;
- Offence grades and their implications and;
- Definitions applicable to all offences.<sup>7</sup>

#### *Specific Section:*

The type and range of offences included in the specific section varies with different criminal codes. Book II of the PC deals with the specific crimes as follows:

- Part I: Crimes against the Personality of the State
- Part II: Crimes against the Public Administration

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<sup>6</sup> See for example, Final Report of the Maldivian Penal Law.

<sup>7</sup> See for example, Final Report of the Maldivian Penal Law (“Table of Contents”). See also the Malaysian Penal Code (available at <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf>) which first deals with “General Explanations”, “Punishments”, “General Exceptions” and certain inchoate crimes, before setting out specific offences.

- Part III: Crimes against the Course of Justice
- Part IV: Crimes against Religious Feelings and Reverence for the Dead
- Part V: Crimes against Public Order
- Part VI: Crimes against Public Safety
- Part VII: Crimes relating to the Abuse of Good Faith of the Public
- Part VIII: Crimes against National Economy, Industry and Commerce
- Part IX: Crimes against Morals and Decency
- Part X: Crimes against the Health of the Human Race
- Part XI: Crimes against the Family
- Part XII: Crimes against the Person and Safety of Individuals
- Part XIII: Crimes against Property

These could benefit from some reorganisation and are discussed in more detail in this paper when addressing the specific crimes. However, as a preliminary observation, the PC could deal with the most serious offences first, such as offences against the person, which include homicide offences. Furthermore, many of the offences contained in the section “Crimes against the Personality of the State” could be incorporated under “Crimes against Public Order and Safety”. Moreover, the offences under “Crimes against Religious Feelings and Reverence for the Dead” could be included under “Crimes against Public Order and Safety” and “Crimes against Morals and Decency”.

In addition, certain offences in the PC require more extensive consideration. For example, there is only one section addressing “narcotics” under “Crimes against Public Safety”. Namely, Article 342 provides that anyone trading in narcotics shall be sentenced to imprisonment for one to three years.<sup>8</sup> Given the varying degree of seriousness of drug offences, and the variety of drugs, it is worth considering addressing drug offences under a separate heading.<sup>9</sup> Similarly, weapons offences such as the use of dangerous weapons, trafficking, manufacture, sale, and possession, could be dealt with separately.

There are also a range of new crimes that could be included in the specific section. As noted during the Workshop, the PC does not deal specifically with environmental crimes (such as, deforestation, export of rare animals), money laundering, cybercrime, telecommunication crimes, and theft of intellectual property rights. Drafters should also consider whether international crimes such as terrorism and piracy should be addressed in the PC or be addressed through separate specialist legislation.

Lastly, it is unclear why there is a separate “Contraventions” section in the PC when many, if not all, of these offences could be incorporated under the headings of the various crimes.<sup>10</sup>

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<sup>8</sup> The sentence may be increased where the drugs are sold to a person under the age of 18, or to a person of unsound mind, or to a person with a drug addiction.

<sup>9</sup> For example, in the UK, the supply and production of Class A drugs, such as cocaine and heroin, attract a sentence of up to life imprisonment and an unlimited fine, or both.

<sup>10</sup> Book III “Contraventions” includes the following: Part I: Contraventions relating to public order and public tranquility; Part II: Contraventions concerning public safety; Part III: Contraventions concerning the prevention of certain cases of offences; Part IV: Contraventions relating to morals and decency; Part V: Contraventions against public health. Crimes against Public Administration could encompass the offences of: Non-Observance of Orders of the Authorities (Article 505); Refusing to Give Particulars Regarding One’s Personal Identity (Article 506). Crimes against Public Order and Safety could include the offences of: Refusal to Lend Assistance on the Occasion of a Riot (Article 507); Seditious Cries, Assembly, and Cries or News Capable of Disturbing Public Assembly (Articles 509, 510, 511). Crimes relating to Weapons could incorporate: Formation of Armed

### *Sentencing:*

The current PC addresses sentencing when dealing with the specific offences. However, there are many sentencing factors, and aggravating and mitigating circumstances, that would apply to all offences. It is, therefore, worth considering including a separate section in the PC setting out sentencing guidelines and aggravating and mitigating factors.

### *Recommendations:*

- Reconsider the structure of the PC so that it includes an expanded general section.
- Reorganise the offences in the specific section, dealing with the most serious crimes first.
- Consider new crimes such as cybercrime, money laundering, theft of intellectual property rights, terrorism, piracy, environmental crimes and consider whether any of these should, or have been, dealt with in separate legislation.
- Consider whether it is necessary to deal with the contraventions in Book III separately, or whether they can be incorporated into the specific section
- Consider grading offences and including a separate section setting out sentencing guidelines with aggravating and mitigating factors.

## **4. Crimes**

### **4.1. Introduction**

This section offers in-depth analysis of the substantive crimes covered in the PC. The approach taken in this paper is to identify particular areas and issues which should be considered with respect to particular crimes, and to identify certain offences that are in serious need of reform. The following is not an exhaustive consideration of areas for reform. Instead, it is intended as a starting point for discussion.

### **4.2. Crimes against the Personality of the State**

#### *Introduction*

The offences under this Part are outdated and shaped by the PC's origins. Currently, many of the crimes and penalties are incompatible with the Constitution, international law and *Sharia*. These crimes will need to be reviewed against Somaliland's contemporary context, namely, a post-conflict, democratic State where the rule of law is constitutionally guaranteed. It will express Somaliland's identity as a young democracy and commitment to balance complicated and sometimes conflicting interests between rights and responsibilities.

Many of the crimes within this section could be included under the section in the PC dealing with crimes against public order. It should also be considered whether conduct during wartime should be dealt with by separate legislation that is in line with international

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Bodies (Article 508). Article 518, which provides for unauthorised businesses, could come within Crimes against Industry and Commerce.

humanitarian law. If such law is already in place, drafters of the PC will need to ensure harmonisation.

*Acts against the Unity of the State and Armed Insurrections:*

The crimes under this Part need to be reviewed in the context of international law. Several sections prescribe the death sentence for certain crimes against the State during wartime. For example, Article 184 provides that “[w]hoever commits an act direct [sic] to subject the territory of the State, or to diminish the independence or to dissolve the unity of the State, shall be punished with death.” Moreover, Article 185 (1) states that a “citizen who bears arms against the State, or serves in the armed forces of a State at war with the Somali State, shall be punished with imprisonment for life. Where he holds a higher command or has a leading role, he shall be punished with death.” This should be considered in the context of international humanitarian law, which provides that enemy combatants, if captured, be given prisoner of war status.<sup>11</sup> *Sharia* also requires that prisoners of war be treated well.<sup>12</sup>

Similarly armed insurrection against the State attracts the death sentence (Article 221), as does the act of provoking civil war (Article 223). These provisions are contrary to international humanitarian law, which also applies to non-international armed conflicts.<sup>13</sup>

*Anti-National Associations and the Right to Freedom of Association*

Article 214 relates to “Anti-National Associations” and attracts a sentence of up to three years. There is potential for this provision to be abused, contrary to the rights to freedom of association and expression, as guaranteed by Articles 23(3) and 32 of the Constitution respectively, as well as international human rights law.<sup>14</sup> It could be used against political organisations as a tool for political oppression. During the Workshop, participants agreed that provisions in the PC regarding political oppression needed to be repealed.

*Recommendations:*

- There be a detailed review of the PC in relation to Crimes against the Personality of the State in light of international humanitarian law.
- Review sentences, in particular, the death penalty in relation to Crimes against the Personality of the State.<sup>15</sup>
- Ensure safeguards against illegitimate or disproportionate interference in the right to freedom of association and expression, as guaranteed by the Constitution and international human rights law.

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<sup>11</sup> Third Geneva Convention relative to the Treatment of Prisoners of War of 1949 and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts of 1977.

<sup>12</sup> There are several sections of the Qur’an and Hadith, which suggest that prisoners of war should be looked after. For example, Surah Muhammad: 4 and Surah al-Insan: 8-9. This is one of the areas where input from an expert in *Sharia* would be beneficial.

<sup>13</sup> Common Article 3 of the Geneva Conventions of 1949 and Article 1 of Additional Protocol II.

<sup>14</sup> Article 22 (1) ICCPR. Article 22 (2) allows for restrictions where they are prescribed by law and necessary in a democratic society in the interests of national security or public safety. See also Article 10 of the ACHPR. Article 23 (3) of the Constitution provides for the right to form, in accordance with the law, political, educational, cultural, social and occupational or employees’ associations. Article 23 (4) of the Constitution allows for restrictions on the right to freedom of association where the association is against national interest.

<sup>15</sup> See also the more detailed discussion of the death penalty in this paper.

- Consider whether some of the crimes under this Part could be addressed through separate legislation and/or dealt with under Crimes against Public Order and Safety.

### **4.3. Parts II and III: Crimes against the Public Administration and the Course of Justice**

#### *Introduction:*

As a preliminary point, the crimes under Parts II and III could be dealt with under the one heading of “Crimes against the Administration”. The offences in Parts II and III deal with “insult” to officials. Such provisions have the potential of stifling political criticism, and criticism of the administration, and are, therefore, an unnecessary restriction of the right to freedom of expression as guaranteed by the Constitution and international human rights law. Moreover, other sections in these parts deal with the conduct of professionals. These provisions should be reviewed to ensure that the PC does not allow for unnecessary interference in professions, in particular, the legal profession, whose conduct should instead be regulated by professional codes and regulatory bodies to ensure independence.

Moreover, there are other inappropriate provisions such as the unnecessary criminalisation of certain contractual matters, and immunity for reasons of “honour”, which is contrary to principles of justice.

#### *Crime of “insult”: Implications for the Right to Freedom Expression*

Article 268 of the PC includes the commonly charged crime of “insult against a public officer”. Article 269 criminalises “insult to a political, administrative or judicial body”, and Article 270 stipulates the crime of “insult to a judge during a hearing”. These provisions have been used in cases involving members of the media and are a source of ongoing frustration for both the law enforcement, justice sector and human rights community. The unrestricted wording of the offences, the criminalisation of certain types of expression, and the risk of executive abuse are all serious concerns, with implications for the right to freedom of expression as provided in Article 32 of the Constitution, and international human rights law.<sup>16</sup> While rules relating to contempt of court may be appropriate, the PC should not criminalise criticism of the administration.

#### *Abuse of Profession and Offences Committed by Advocates:*

Article 274 criminalises “abuse of profession requiring special State qualification”, which attracts a sentence of six months or a fine. It may be more appropriate for such conduct to be dealt with by relevant codes of conduct.<sup>17</sup>

Moreover, Articles 299 to 301 cover offences against the course of justice committed by “advocates”. Article 299 provides that “advocates or technical advisers” who are unfaithful to their professional duties and cause injury to a party defended, assisted or represented before

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<sup>16</sup> Article 19 of the ICCPR and Article 9 of the ACHPR.

<sup>17</sup> Do Judges require special State qualification? If so, there is potential for interference in the judiciary. See the UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

judicial authorities, shall be punished with imprisonment from one to three years and a fine. The sentence may be increased to ten years where there is prejudice to an accused person. These offences should ideally be dealt with by professional regulatory bodies and their codes of conduct, rather than the PC, in order to ensure the independence of the legal profession. In this regard, the UN Basic Principles on the Role of Lawyers provide that disciplinary proceedings against lawyers should be determined in accordance with their code of professional conduct and other recognised standards and ethics of the legal profession.<sup>18</sup> They further stipulate that governments shall ensure that lawyers can perform their professional functions without improper interference, and that lawyers shall not be threatened with prosecution for any action taken in accordance with their professional duties.<sup>19</sup>

#### *Breach of Contract - Civil Law Matter?*

Article 280 criminalises the breach of a contract for the supply of services to a public establishment and attracts a sentence of up to three years imprisonment, as well as a fine. It is recommended that this offence be removed from the PC. Breach of contract should remain a civil law matter and not be included in a penal code. However, criminalisation where fraud is involved, as provided by Article 281, is appropriate.

#### *Immunity:*

Articles in this Part of the PC include provisions which give immunity to individuals guilty of providing false evidence, false expert opinion or fraud in proceedings (Article 293), or who provide assistance to evade investigation (Article 303), if they can show that they have been forced by the necessity of saving themselves or a near relative from a “serious and unavoidable injury to liberty or honour”. The removal of this immunity should be considered. The definition of “near relative” is very wide and immunity granted, for reasons of “honour”, to individuals guilty of committing serious crimes is contrary to the protection of the administration of justice.

#### *Interference by Clan Elders*

One area which Workshop participants felt was not dealt with by the PC, is the interference by clan elders in the justice process. For example, it was said that interference in court proceedings by clan elders was common and often resulted in prosecutions being dropped or minor sentences. A provision in the PC for interference in court proceedings, and a penalty for such interference, should be considered.

#### *Recommendations*

- Provisions criminalising “insult” to a public officer, a political, administrative or judicial body, and a judge, could be removed. While rules relating to contempt of court may encompass insult to a judge during a hearing, other provisions in the PC relating to insult are unnecessary, open to abuse, and should be considered in light of the right to freedom of expression as guaranteed by the Constitution and international human rights law.

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<sup>18</sup> Principle 29 of the UN Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

<sup>19</sup> Id, Principle 16.

- Consider whether it would be more appropriate to have professional codes of conduct and regulatory bodies deal with cases of abuse of profession and the conduct of advocates.
- Review the crime of breach of contract for the supply of services to a public establishment. Consider whether this should instead be dealt with by a civil law action giving rise to civil remedies, as opposed to criminal penalties.
- Review immunity provisions and consider whether these are in line with principles of justice. In particular, consider removing immunity for purposes of saving a relative for injury to “honour”.
- Consider including a provision on interference in the administration of justice, such as an offence of influencing judicial conduct through, for example, intimidation or bribes to address interference by clan elders.

#### **4.4. Part IV: Crimes against Religious Feelings and Reverence for the Dead**

##### *Introduction:*

The crimes in this Part are aimed at protecting religious beliefs and practices, with a particular reference to the “religion of the State”, namely, Islam. It also includes certain offences relating to the dead and respect for their burial sites. As a preliminary observation, the offences here could be included under other sections. For example, crimes against religion could fall within the section dealing with crimes against public order, and crimes relating to the dead may be incorporated into the section on public decency and morals. Provisions in this section should also be considered in light of international human rights law, which ensures protection for all religions without discrimination.<sup>20</sup>

##### *Crimes Relating to Religion*

Article 313 criminalises the act of bringing the religion of the State into contempt, or publicly insulting it, and provides for a sentence of up to two years imprisonment. Article 314 criminalises the disturbance of religious functions, ceremonies or religious practices of the Islamic faith, and Article 315 provides that whoever commits any of the aforementioned acts against a religion permitted in the State, shall also be punished.

Article 313 is currently very broadly worded and, therefore, open to abuse. It should be reviewed in light of the rights to freedom of expression and religion, as guaranteed by Articles 32 and 33 of the Constitution, as well as international human rights law.<sup>21</sup> Article 313 could benefit from more specific wording. In this regard, it is useful to consider the laws in other jurisdictions. For example, the Malaysian Penal Code is quite specifically worded. Sections 295 to 298A relate to “injuring [or] defiling a place of worship, disturbing a religious assembly, trespassing on burial places, uttering words with deliberate intent to wound the religious feelings of any person and causing disharmony, disunity or feelings of enmity, hatred or ill-will or prejudicing the maintenance of harmony or unity on the grounds of religion.”

In the Maldives, the new Penal Code, which is to come into effect next year, includes the offence of “criticising Islam”. The offence is included under the “Public Order and Safety

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<sup>20</sup> Article 18 of the ICCPR and Article 8 of the ACHPR.

<sup>21</sup> Article 18 of the ICCPR and Article 8 of the ACHPR (freedom of religion); Article 19 of the ICCPR and Article 9 of the ACHPR (freedom of expression).

Offences”. A person commits this offence where, with the purpose to insult Islam, he: (i) engages in religious oration in public or in a public medium; or (ii) produces, sells, distributes, or offers material that is critical of the fundamentals of Islam as set out in the Constitution. However, there is an exception where the conduct is performed on behalf of the government or a scholarly institution, or by an individual, for scientific or religious study.<sup>22</sup>

Notably, in the UK, there is the more specific crime of incitement to religious hatred. The UK Racial and Religious Hatred Act 2006 (“UK Act”) criminalises hatred against persons on religious grounds. “Religious hatred” means hatred against a group of persons defined by reference to a religious belief or lack of religious belief.” Several acts intended to stir up religious hatred are included and, notably, protection extends to all religions equally.<sup>23</sup> The UK Act also includes specific protection of the right to freedom of expression by permitting “discussion, criticism, or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs of their adherents...”<sup>24</sup>

The UK exception may not be entirely appropriate in the context of Somaliland with its adherence to *Sharia*. However, the offence in the Maldivian example strikes a balance between maintaining values based on Islam, as enshrined in the Somaliland Constitution, and the right to freedom of expression, by allowing the exception of scholarly criticism.

Lastly, Article 315 of the PC extends protection to other “religions permitted by the State”. However, it is unclear how it is determined which religions are included. It should be considered whether the words “permitted by the State” should be removed. Indeed, extending the same protection to all other religions would be consistent with international human rights law, as well as the Constitution, which protects the right to freedom of belief.<sup>25</sup>

#### *Reverence for the Dead:*

Articles 316 to 319 deal with crimes relating to the dead and respect for their burial sites. It includes criminalisation of various types of abuse of a dead body. The crimes in these sections could instead be dealt with under Crimes against Morals and Decency.

#### *Recommendations:*

- Consider whether the crimes relating to religion could instead be incorporated under the section dealing with Crimes against Public Order and Safety.
- Review the current offence of bringing the religion of the State into contempt as it is broadly worded and possibly open to abuse.

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<sup>22</sup> Final Report of the Maldivian Penal Law, Section 617 of the draft Penal Code.

<sup>23</sup> The UK Act includes the use of words or behaviour or display of written material which is threatening and intends thereby to stir up religious hatred. This could be in the form of a publication or written material, a public performance, a recording which is shown, played or distributed. A broadcasting and the possession of inflammatory material is also prohibited. See sections 29B to 29G of the UK Act 2006.

<sup>24</sup> Section 29J of the UK Act 2006.

<sup>25</sup> Article 33 (1) of the Constitution provides that every person shall have the right to freedom of belief, and shall not be compelled to adopt another belief. Article 2 (1) of the ICCPR provides that all rights should be ensured without discrimination (includes on grounds of religion) and Article 18 of the ICCPR guarantees the right to freedom of religion. Article 2 of the ACHPR provides that every individual is entitled to the enjoyment of rights and freedoms recognised and guaranteed in the Charter without distinction of any kind such as race, ethnic group, colour, language, religion or political or any other opinion, national and social origin, birth, or any status.

- Consider including an exception to the crime of insulting religion. For example, where the conduct is performed on behalf of a scholarly institution, or by an individual for scientific or religious study.
- Consider including the crime of incitement to religious hatred.
- Consider extending protection to all other religions.
- Consider whether offences relating to the dead could be dealt with under Crimes against Morals and Decency.

#### **4.5. Parts V and VI: Crimes against Public Order and Public Safety**

##### *Introduction:*

The PC currently has separate sections for Crimes against Public Order and Crimes against Public Safety. These could possibly be included under one heading. In addition, some of the crimes contained in the section “Crimes against the Personality of the State”, could also be incorporated here, as could crimes relating to religion and a new offence of incitement to religious hatred, as discussed in the previous section.

The types of offences dealt with under public order crimes are wide ranging. They include instigation to disobey laws, association for the purpose of committing crimes, intimidation of the public, and publication of false news capable of disturbing public order.<sup>26</sup> Public safety offences include crimes such as, carnage, causing disaster, causing an epidemic, pollution, sale of noxious food, and trading in narcotics.<sup>27</sup> Some of these crimes deserve more comprehensive consideration under separated headings, such as, drug offences and offences involving firearms or explosives. The following is a consideration of some of the crimes within these sections.

##### *Firearms and Explosives*

Article 325 includes the offence of intimidation of the public by means of explosives. Other crimes in the PC involve the use or possession of firearms.<sup>28</sup> It is worth having a separate section relating to weapons and explosives that could deal with the use of dangerous weapons during an offence, the use of explosives, as well as the trafficking, manufacture, sale or possession of firearms or explosives.<sup>29</sup>

##### *Drug Offences*

The PC currently deals with narcotics under “Crimes against Public Safety”. Article 342 provides that anyone trading in narcotics shall be sentenced to imprisonment for one to three years. The sentence may be increased where the drugs are sold to a person under the age of 18, to a person of unsound mind, or to a person with a drug addiction. This appears to be the only provision on the possession, supply and production of drugs. It should be reviewed to consider the different types of drugs, and include conduct such as trafficking, sale, use and possession. The punishment should also reflect the nature of the crime. For example, in the UK, the supply and production of Class A drugs, such as cocaine and heroin, attract a

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<sup>26</sup> PC, Articles 320 to 328.

<sup>27</sup> PC, Articles 329 to 343.

<sup>28</sup> For example, PC, Article 221 (armed insurrection against the powers of the State).

<sup>29</sup> See for example Maldivian draft Penal Code, Chapter 710 in the Final Report of the Maldivian Penal Law.

sentence of up to life imprisonment and an unlimited fine, or both.<sup>30</sup> Accordingly, offences relating to narcotics require much more detailed consideration.<sup>31</sup>

#### *Environmental Crimes:*

Article 335 of the PC deals with pollution of water and food under Crimes against Public Safety. There are now such a wide range of offences relating to the environment, which could be included in the PC, and given detailed consideration in a separate section. In addition to pollution, new offences could be included such as, deforestation, and trading in rare animals, as discussed during the Workshop.

#### *Public Health Offences:*

Articles 336 to 341 set out a number of offences under Crimes against Public Safety (for example, offences relating to food and medicine), which could be included under a separate section addressing public health offences. These could also include many of the crimes dealt with in the PC under “Crimes against the Health of the Human Race”.

#### *Recommendations:*

- Consider restructuring this Part in order to include offences from other sections. Some of the offences against the personality of the State and crimes relating to religion could be included here.
- Consider removing certain offences from this Part in order to deal with them separately in more detail, such as, crimes relating to firearms and explosives, drug offences, environmental crimes and public health offences.
- Review provisions in this Part in the context of the rights to freedom of expression, religion and association, as enshrined in the Constitution and guaranteed under international human rights law.

### **4.6. Part VII: Crimes relating to the Abuse of Good Faith of the Public**

Articles 348 to 359 deal with crimes covering counterfeiting currency, securities and stamps. Articles 360 to 365 set out offences relating to counterfeiting of seals, instruments or marks of authentication, certification or identification. Articles 366 to 382 address the falsification of documents, and Articles 383 to 386 deal with “personation”, commonly known as identity fraud.

#### *Recommendations:*

- Many of these provisions should be reviewed in light of technological advances.
- A more specific heading for such offences could be considered, such as, “Forgery and Fraudulent Practices”.

### **4.7. Part VIII: Crimes against National Economy, Industry and Commerce**

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<sup>30</sup> See also Final Report of the Maldivian Penal Law, Table of Contents, Chapter 720. Drug Offenses.

<sup>31</sup> Does Somaliland already have any specialised legislation dealing with narcotics?

This Part of the PC is divided into two sections, namely, Crimes against National Economy (Articles 387 to 392) and Crimes against Industry and Commerce (Articles 393 to 387). The offences under the former are wide ranging and include the destruction of raw materials and agriculture, the spread of disease to plants or animals, the fraudulent lowering or raising of prices, and lockouts and strikes. Some of these offences could be included in a separate section on environmental crimes.

The offences under Crimes against Industry and Commerce deal with infringement of freedom of industry, fraud relating to industry and commerce, and the sale of non-genuine food or industrial products. These sections would benefit from reorganisation, and should be reviewed in light of advancements in technology and new types of financial crimes. Indeed, a number of judges interviewed by Horizon Institute during its institutional analysis noted that one of the most profound weaknesses in the PC is its inability to reflect contemporary forms of financial crimes.

*Recommendations:*

- Consider whether some of the offences under Crimes against National Economy would be better dealt with in other sections, such as Environmental Crimes and Crimes against Industry and Commerce.
- Review the offences under Crimes against Industry and Commerce in light of technological advances and new types of financial crimes.

#### **4.8. Part IX: Crimes against Morals and Decency**

*Introduction:*

This Part includes crimes of sexual violence, offences against modesty and sexual honour, and crimes against other morals, such as offences relating to alcohol. Articles 398 to 401 deal with sexual offences including rape and other acts committed “out of lust”. These provisions require a wholesale review to ensure that offences are in line with contemporary thinking and comparative reforms on sexual offences.

Significant areas of reform in the PC with regard to sexual offences include: removing the requirement of violence or threats and introducing the concept of consent in rape cases; widening the definition of rape to include victims of the same sex; addressing gang rape, incestuous rape, and rape in marriage; dealing with compensation for rape; and expanding the definition of sexual assault. The sentences for sexual offences also require review.

It is further necessary to consider whether the PC should deal with sexual offences in detail, or merely make reference to separate legislation dealing with such crimes. In particular, there is currently a draft “Rape Act” (or Sexual Offences Bill) which is yet to be finalised and made into law. Drafters must ensure harmonisation between the PC and any legislation addressing sexual offences.

Moreover, the offences against modesty and honour (Articles 402 to 410) largely deal with obscene acts or materials, as well as prostitution. The definition of “obscene” requires review. Other offences that could be included in this Part are the abuse of a dead body and the sale of body parts.

*Definition of Rape:*

Article 398 (4) of the PC currently states that “penetration of the male sexual organ shall constitute carnal intercourse.” This definition could perhaps be more specific in order to ensure that different types of penetration are included. For example, the UK Sexual Offences Act 2003 extends the definition of rape to include the penetration by “a penis of the vagina, anus or mouth of another person.”<sup>32</sup> The new Maldivian Penal Code provides that “sexual intercourse” means “any penetration, however slight, of the sex organ or anus of one person by an object, appendage, or penis of another person; emission is not required.”<sup>33</sup>

Moreover, Article 398 (1) of the PC currently requires “violence or threats”. Violence or threats should not be elements of the crime of rape. Rather, the emphasis should be on “consent”. For example, in the UK, the Sexual Offences Act 2003 does not require the victim to have physically resisted in order to prove a lack of consent. A person consents if she or he agrees by choice, and has the freedom and capacity to make that choice. The essence of this definition is the agreement by choice.

Similarly, the Malaysian Penal Code defines rape as sexual intercourse with a woman under any of the following circumstances: (a) against her will; (b) without her consent; (c) with her consent when that consent has been obtained by putting her in fear of death or hurt to herself, or any other person or obtained under a misconception of fact and the man knows or has reason to believe that the consent was given in consequence of such misconception; (d) with her consent when the man knows that he is not her husband, and her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married or to whom she would give consent; (e) with her consent when, at the time of giving such consent, she is unable to understand the nature and consequences of that to which she gives consent; (f) with her consent, when that consent is obtained by using his position of authority over her or because of a professional relationship or other relationship of trust in relation to her; (g) with or without her consent, when she is under 16 years of age.<sup>34</sup>

The Horizon Institute’s Policy Brief on the draft Rape Act recommends the following definition for the crime of rape: “A person commits the offence of rape if he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs. The other person does not consent to the penetration, the consent is obtained by force, coercion or intimidation of any kind.”<sup>35</sup>

#### *The Victim:*

Currently, the PC only refers to the victim being of the “other sex”. This should be removed to take into account victims of the same sex. Furthermore, the age of the victim can be considered an aggravating factor, as discussed further below.

It is also worth considering whether to ensure that rape in marriage is included in the PC. The new Maldivian Penal Code allows for a rebuttable presumption of consent where a person engages in sexual intercourse with his spouse. It should also be considered whether the PC should specifically refer to incestuous rape. For example, Section 376 of the Malaysian Penal Code provides for incestuous rape, which is punishable for a term of not less than eight years

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<sup>32</sup> Section 1 (1) of the Sexual Offences Act 2003. Section 2 deals with assault by penetration.

<sup>33</sup> Final Report of the Maldivian Penal Law, Chapter 130, Section 131 (c).

<sup>34</sup> Sections 375 and 376 of the Malaysian Penal Code.

<sup>35</sup> Horizon Institute Policy Brief on Somaliland’s Rape Law.

and not more than 30 years. This is defined as a situation where a man “commits rape on a woman whose relationship to him is such that he is not permitted under the law, religion, custom or usage, to marry her”.

#### *Other Sexual Offences and Sentencing:*

Article 398 of the PC provides that the sentence for rape shall be five to 15 years. Articles 399 to 401 of the PC provide for “Acts of Lust Committed with Violence” (up to five years imprisonment), “Unnatural Offences Committed with Violence” (includes cases where the victim is of the same sex, and the punishment of five years may be increased), and “Abduction for Purposes of Lust or Marriage” (imprisonment of one to three years). These sections require review to expand the definition of other sexual offences, and to include higher sentences where there are certain aggravating factors.

For example, section 377CA of the Malaysian Penal Code refers to sexual assault as a “sexual connection with another person by the introduction of any object into the vagina or anus of the other person without the other person’s consent....” It should also be considered whether sexual assault could include acts of psychological or emotional violation or forcing or manipulating someone to witness or participate in any sexual acts.

The sentences in the PC also require review as they do not take into account several aggravating circumstances that would justify a higher sentence in certain cases. For example, in the UK, rape attracts a maximum sentence of life imprisonment, and for sexual assault, the maximum sentence is ten years imprisonment depending on the nature of the sexual behaviour.<sup>36</sup> The Sexual Offences Act 2003 provides for certain aggravating factors, such as: abduction; detention; the offender is aware that he is suffering from a sexually transmitted infection; abuse of trust;<sup>37</sup> a sustained attack; acting with others; and the age of the victim.

In Malaysia, the Penal Code provides that the sentence for rape is up to 20 years (the convicted person may also be liable to whipping). It, too, provides for certain aggravating factors which attract a higher sentence of up to 30 years. These include: hurt to the victim or to any other person; putting the victim or any other person in fear of death or hurt; rape is committed in the company of, or in the presence of, any other person; lack of consent where the victim is under 16; the victim is under 12 (with or without consent); where consent is obtained by using a position of authority over the victim or a professional relationship or other relationship of trust; and at the time of the offence, the victim was pregnant.<sup>38</sup>

#### *Compensation for Sexual Offences:*

Workshop participants considered that compensation for rape and other sexual offences needed to be addressed by the PC. Many jurisdictions allow for victims to claim damages either from the offender, or from a compensation body. Article 27 of Somaliland’s draft Rape Act provides for an Anti-Rape Fund to assist victims. Moreover, under its “Definitions”, the draft Rape Act refers to “compensation” as “compensation provided by way of a court order issued pursuant to [] this Act directing the perpetrator to pay compensation and damages for

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<sup>36</sup> Sections 1 and 3 of the Sexual Offences Act 2003.

<sup>37</sup> The PC currently includes abuse of power by a public officer (Article 398 (3)). This could be extended to include other situations where there is an abuse of trust, such as, an education provider, a healthcare professional in a hospital. See for example, Section 21 of the UK Sexual Offences Act 2003.

<sup>38</sup> Sections 375 and 376 of the Malaysian Penal Code.

physical and emotion[al] injuries caused by the acts [of] violence committed by the perpetrator against the victim.” However, the main body of the draft legislation does not go on to deal with the issue of compensation. Provision could specifically be made for compensation in the new Rape Act, as well as the PC.

#### *Obscenity:*

Under Article 404 of the PC, acts or objects are “obscene” where they, “in the general opinion, are offensive to modesty.” The PC could benefit from a more specific definition as it is currently very broad. For example, the new Maldivian Penal Code specifies that material or a performance is “obscene if the average person, applying the contemporary adult community standards of the Maldives, would find that (1) taken as a whole, the material or performance appeals to a prurient interest, and (2) depicts or describes sexual acts in a patently offensive way.”<sup>39</sup>

#### *Reverence for the Dead and the Sale of Human Body Parts:*

Part IV of the PC deals with crimes relating to dead bodies and burial sites.<sup>40</sup> These offences could be addressed under this Part, dealing with morals and decency. In addition, the PC does not currently criminalise the unlawful buying or selling of human body parts or corpses. This is an important provision and can protect the public interest in organ donations and transplants for the purposes of medical operations and scientific research. Allowing organs to be bought and sold on the black market would endanger the safety of such operations and research. It can also help to prevent the exploitation of people who are desperate to raise money through selling a vital organ. Moreover, any section dealing with the sale of human body parts should allow for exceptions to the offence in order to ensure that organ donors are reimbursed for certain expenses and loss of wages.<sup>41</sup> Such an offence would further be in line with *Sharia* which also prohibits the sale of human body parts.

#### *Homosexuality:*

Article 409 criminalises intercourse between two people of the same sex and is punishable by imprisonment of three months to three years. There is general consensus that *Sharia* proscribes sodomy. It is, nonetheless, worth discussing this provision in light of international human rights law. Perhaps stringent evidentiary requirements could limit the use of this offence, and the sentence could be reviewed so that the maximum sentence is reduced.

#### *Recommendations:*

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<sup>39</sup> Section 622 (d) of the draft Maldivian Penal Code. See the Final Report of the Maldivian Law.

<sup>40</sup> Articles 316 to 319.

<sup>41</sup> See for example, Final Report of the Maldivian Penal Law, Official Commentary, p. 200 (Comment on Section 624). Section 624 of the draft Maldivian Penal Code provides that a “person commits an offense if he knowingly buys or sells a part of a human body”. With respect to exceptions, a “person does not commit the offense if he gives or receives compensation for a human body part that is only: (1) reimbursement of actual expenses incurred in donating a body part or fluid for medical or scientific use; or (2) a payment provided under a plan of insurance or other health care coverage; or (3) reimbursement of reasonable costs associated with the removal, storage, or transportation of a human body part or fluid for scientific purposes; or (4) purchase or sale of drugs, reagents, or other substances made from human body parts, for use in medical or scientific research, treatment or diagnosis.”

- For the offence of rape, review the definition of “penetration”, remove the requirement of “violence or threats”, and instead emphasise the lack of consent.
- Review the definition of “sexual assault” and consider expanding it to include psychological or emotional violations and forcing another to commit sexual acts.
- Consider including specific aggravating factors for sexual offences, such as the victim’s age, gang rape, offender’s knowledge that he had a sexually transmitted disease, use of violence, kidnapping, a prolonged attack, or abuse of trust.
- Consider a system for compensation for victims of sexual offences.
- Ensure the PC is in line with the draft Rape Act.
- Introduce a more specific definition of “obscene” acts or materials.
- Include offences relating to the dead.
- Introduce a new offence of the sale of human body parts.
- Discuss the crime of homosexuality in light of international human rights law, and consider stringent evidentiary requirements, as well as a lesser sentence.

#### **4.9. Parts X and XI: Crimes against the Health of the Human Race and Crimes against the Family**

##### *Introduction:*

The offences currently addressed under “Crimes against the Health of the Human Race” mainly deal with abortion and sterilisation. These could instead be incorporated within “Crimes against the Family” and require review, particularly as they currently appear to be contrary to *Sharia*. Moreover, the offence of adultery could benefit from stringent evidentiary requirements, in accordance with *Sharia*. A draft family law bill was developed by the LRC, but has not been enacted. Provisions in the draft bill should be considered in order to ensure harmonisation between the laws.

##### *Abortion:*

Article 419 provides that anyone who performs a consensual abortion shall be punished with imprisonment from one to five years. The same applies to a woman who consents to an abortion. Although this sentence may be reduced for reasons of “honour”, this is not defined and even in such cases, the sentence is imprisonment. This section should be reviewed as, not only is it inconsistent with international norms, it is contrary to *Sharia*. It is widely accepted in Islamic jurisprudence that abortion is permitted where it is necessary and carried out before four months.<sup>42</sup> Depending on the school of thought within *Sharia*, “necessity” may be defined as cases where the woman’s health is at risk, where the pregnancy is due to incest or rape, and possibly even where there is some serious fetal deformity. If abortion is to be permitted, the PC may, nevertheless, criminalise abortion after a certain stage of the pregnancy, in accordance with *Sharia*.

Somaliland may want to look to countries which apply *Sharia* to some extent, such as Malaysia, where abortion laws are considered moderately permissive. Section 312 of the Malaysian Penal Code states that a termination of pregnancy is permitted in circumstances

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<sup>42</sup> According to Hadith, the soul is breathed into the body of the foetus at 120 days. See Sahih Al-Bukhari, Volume 4, Book 55, No. 549.

where there is risk to the life of the pregnant woman or threat of injury to her physical or mental health.

*Sterilisation:*

Article 423 of the PC criminalises sterilisation.<sup>43</sup> While sterilisation without consent should clearly be a crime, it should not be an offence where a person voluntarily undergoes the procedure. This provision should be reviewed in light of certain health reasons where sterilisation may be necessary to protect a person's health, or where they may not be able to care for a child.

*Adultery:*

The PC currently criminalises adultery but does not make provision for how this would be proven. It is worth considering the introduction of stringent evidentiary requirements to reflect the notion that this crime offends social and Islamic values only when publicly known.<sup>44</sup>

*Recommendations:*

- Deal with the offences in Parts X and XI under the one heading of “Crimes against the Family”.
- Review the offence of abortion to allow for exceptions in line with *Sharia*, such as where the woman's health is at risk, where there is a serious fetal abnormality, or where the pregnancy is the result of rape or incest.
- Proscribe abortion after a certain stage in the pregnancy, in accordance with *Sharia*.
- Remove the criminalisation of consensual sterilisation.
- Consider including stringent evidentiary requirements for the crime of adultery.

#### **4.10. Part XII: Crimes against the Person and Safety of Individuals**

*Introduction:*

This Part includes a wide range of crimes and could benefit from restructuring. Articles 434 to 450 cover offences such as murder, assault, infanticide, suicide and assisted suicide.<sup>45</sup> Provision is also made for crimes committed for reasons of “honour” (“honour” crimes). The latter require special consideration, as the current PC provisions are contrary to international human rights law.

Articles 451 to 454 deal with “Crimes against Honour” (not to be confused with “honour” crimes) and include the offences of insult and defamation, which should instead be dealt with through civil law. Other crimes under this Part are slavery, unlawful arrest, forced labour, and violence or threats used to cause another to commit an offence (Articles 455 to 469). Articles

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<sup>43</sup> “1. Whoever performs on a person of either sex, with the consent of the latter, acts directed to render that person impotent to procreate, shall be punished with imprisonment from six months to two years and with fine.... 2. Whoever consents to such acts on his own person, shall be liable to the same punishment”.

<sup>44</sup> For example, see the Final Report of the Maldivian Law, Draft Penal Code, Section 411 requiring the testimony of four witnesses.

<sup>45</sup> Consider following structure: Murder; Manslaughter; Negligent Homicide; Causing, Aiding, Soliciting, or Attempting Suicide; Concealing a Homicide.

470 to 479 deal with Crimes against the Privacy of the Home and include secrecy offences such as unlawful surveillance.

Currently, this Part is not user-friendly. It could be divided into separate sections, such as, offences against the person (dealing with homicide offences and assault). Slavery and additional offences relating to trafficking deserve special consideration under a separate heading, and issues such as surveillance could be addressed in a separate section dealing with privacy offences.

### *Homicide Offences:*

Article 434 of the PC provides that whoever commits murder shall be punished with death. However, it does not set out the elements of the crime of murder, in particular, criminal intent. For example, in the UK, the principal defendant must have intended to kill or cause grievous bodily harm. Furthermore, although it includes the crime of “death by negligence” (Article 445), it does not clearly define this. Nor does the PC include the crime of manslaughter, which is a very different crime to murder, or death by negligence. There needs to be a detailed consideration of homicide offences, which vary from one jurisdiction to another but generally include:

- Murder: In some jurisdictions, such as the USA and South Africa, murder is categorised as First and Second Degree Murder. The former requires premeditation, while the latter is intentional killing without premeditation or planning but is caused by dangerous conduct with a complete disregard for human life. The latter is similar to the crime of voluntary manslaughter found in some jurisdictions, such as the UK.<sup>46</sup>
- Voluntary manslaughter: Killing with the intent for murder but where a partial defence applies, such as, a suicide pact, loss of control or diminished responsibility.<sup>47</sup>
- Involuntary manslaughter: Conduct which amounts to gross negligence with the risk of death (gross negligence manslaughter); or unlawful conduct involving danger or some harm resulting in death (unlawful and dangerous act manslaughter).<sup>48</sup>

Moreover, Article 435 of the PC also includes a separate offence of “Infanticide for Reason of Honour”. Many jurisdictions deal with infanticide but not for reasons of “honour”. Rather, the crime of infanticide most commonly applies to a woman where she causes death to her baby (in the UK, under the age of 12 months) at a time when the balance of her mind was disturbed by reason of her not having fully recovered from the effects of childbirth, or due to the effects of lactation. In such cases, the mother is guilty of the offence of infanticide and may be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.<sup>49</sup>

Furthermore, the current criminalisation of suicide in the PC should be discussed. Article 437 imposes a maximum sentence of five years for attempted suicide. Many jurisdictions no

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<sup>46</sup> See for example, [www.cps.gov.uk/legal/h\\_to\\_k/homicide\\_murder\\_and\\_manslaughter/](http://www.cps.gov.uk/legal/h_to_k/homicide_murder_and_manslaughter/)

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> See for example, Section 1 of the UK Infanticide Act, as amended by section 57 of the Coroners and Justice Act 2009.

longer criminalise suicide or attempted suicide. However, suicide pacts or assisted suicide may be addressed along with homicide offences.<sup>50</sup>

#### *Negligence:*

Article 445 provides that death caused by negligence attracts a maximum sentence of five years imprisonment. Where there is death or injury to more than one person, there can be an aggregate sentence of up to 12 years imprisonment. Article 446 also criminalises injury caused by negligence.

While it is appropriate for the PC to deal with death by negligence, it needs to properly define this crime and review the sentence. Gross negligence may amount to manslaughter and, therefore, should be addressed with other homicide offences. In such cases, a maximum sentence of five years may be considered inappropriate. For example, in the UK, gross negligence causing death attracts a maximum sentence of life imprisonment. Aggravating factors include: multiple deaths; prolonged and deliberately dangerous conduct; an awareness of significant risk of death or really serious injury; ignoring warnings; pursuing a course of conduct for financial gain.<sup>51</sup> It is also worth considering the inclusion of the crime of corporate manslaughter to address death resulting from the actions or failures of an organisation.

#### *Honour Crimes:*

The current PC has separate provisions for “honour” crimes and by providing for a lesser sentence, treats them as less serious. For example, infanticide committed for reasons of “honour” attracts a maximum sentence of 15 years (Article 435), and causing death “in heat of rage” to a spouse, daughter, or sister for “fornication”, which offends the perpetrator’s “honour”, attracts a maximum sentence of ten years (Article 443).

The UN General Assembly, the UN Human Rights Committee (“HRC”), and its Committee on the Elimination of Discrimination against Women, have recommended that “honour” crimes, a form of gender based violence, should not be invoked by perpetrators to escape criminal responsibility, and should not attract a lesser sentence. Rather, they should be treated as seriously as other violent crimes. The HRC has further recommended that where crimes have been committed for reasons of “honour”, this should be treated as an aggravating factor.<sup>52</sup>

A further point for discussion is whether there should be specific legislation, or provisions in the PC, dealing with violence against women. For example, UNIFEM and Advocates for

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<sup>50</sup> For example, the UK, USA, Australia, Canada, Ireland, New Zealand, South Africa, among others.

<sup>51</sup> See *R v. Johnson* [2009] 2 Cr. App. R (2) 28.

<sup>52</sup> General Assembly resolution 65/228 “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women”, para. 15 (d); General Assembly resolution 59/165 “Working Towards the Elimination of Crimes against Honour”; Human Rights Committee, “Concluding observations on the initial report of Turkey adopted by the Committee at its 106<sup>th</sup> session (15 October – 2 November 2012)”, CCPR/C/TUR/CO/1, para. 13; Committee on the Elimination of Discrimination against Women “Concluding comments of the Committee on the Elimination of Discrimination against Women: Jordan”, CEDAW/C/JOR/CO/4, paras. 23-24. See also “Good Practices in Legislation on Violence against Women, Report of the Expert Group Meeting, 26-28 May 2008”.

Human Rights have produced guidance on “Developing Legislation on Violence against Women” which may be of assistance.<sup>53</sup>

#### *Insult and Defamation:*

Article 451 criminalises speech deemed to “insult” a person by offending their “honour or dignity”, and Article 452 criminalises defamation, attracting prison sentences of up to three years.<sup>54</sup> These provisions require review in light of international human rights guarantees, which are reflected in the Constitution.<sup>55</sup> The UN HRC has recommended abolishing criminal defamation laws and views them as an unnecessary restriction on the right to freedom of expression. It has recommended that libel and defamation should instead be dealt with through civil law remedies. If defamation is to be criminalised, it should only be countenanced in the most serious of cases and imprisonment is not considered an appropriate penalty.<sup>56</sup>

#### *Slavery, Forced Labour and Trafficking:*

A number of provisions in this chapter relating to slavery can benefit from review in light of international jurisprudential developments on human trafficking, bonded labour, organised crime and criminal networks. These offences deserve more detailed consideration under a separate heading.

#### *Crimes against Secrecy:*

Articles 472 to 479 deal with the interception of correspondence, as well as telephonic or telegraphic communications, disclosure of correspondence and disclosure of secret documents and “scientific or industrial secrets”. These offences need to be reviewed in light of technological developments. In addition, privacy offences, such as the interception of communications, surveillance and disclosure of private correspondence, could be dealt with separately to offences relating to the disclosure of official secrets, as well as trade and industrial secrets, which may result in some form of harm.

#### *Recommendations:*

- Homicide offences, such as murder, manslaughter, death caused by gross negligence, should be dealt with under a separate heading and the elements of each should be clearly

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<sup>53</sup> Available at <http://www.endvawnow.org/uploads/modules/pdf/1355776748.pdf>

<sup>54</sup> Article 451 includes offending someone’s honour in writing or drawing and provides for imprisonment for up to one year. The sentence may be increased where the offence is committed in front of more than one person. Article 452 provides for imprisonment of up to one year for defamation and this may be increased to three years if done through the media.

<sup>55</sup> Article 32 (1) of the Constitution provides: “Every citizen shall have the freedom, in accordance with the law, to express his opinions orally, visually, artistically or in writing or in any other way.” Article 32 (3) provides: “The press and other media are part of the fundamental freedoms of expression and are independent. All acts to subjugate them are prohibited, and a law shall determine their regulation.”

<sup>56</sup> HRC General Comment No. 34, para. 47. See also Views of the HRC under article 5, paragraph 4 of the Optional Protocol to the International Covenant on Civil and Political Rights (103<sup>rd</sup> Session) (CCPR/C/103/D/1815/2008) in relation to the Philippines. See also the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 9 – 10 December 2002.

defined. Suicide pacts and assisted suicide can also be addressed under homicide offences.

- Consider the decriminalisation of suicide and attempted suicide.
- Remove reference to crimes committed for reasons of “honour” and instead treat such cases as aggravating circumstances in accordance with international human rights norms.
- Review the crime of infanticide.
- Consider the decriminalisation of “insult” and defamation in accordance with international human rights law.
- The offences of slavery, forced labour and human trafficking should be considered in detail under a separate heading.
- Consider a separate section dealing with privacy offences, which would cover offences such as interception of communications and unlawful surveillance.
- Consider a separate section dealing with the disclosure of official and trade secrets.

#### **4.11. Part XIII: Crimes against Property**

This Part is divided into two chapters, namely, Crimes against Property by Means of Violence (Articles 480 to 495) and Crimes against Property by Fraud (Articles 496 to 504). This section could benefit from restructuring. In particular, it could include the following sub-headings: theft offences; property damage; trespass; and fraudulent practices. Also included within this Part is the offence of killing or injury to animals (Article 494), which would perhaps more appropriately be dealt with as the offence “cruelty to animals”, along with other offences against morals and decency.

*Recommendations:*

- Reorganise crimes under separate sub-headings, such as: theft offences; property damage; trespass; fraudulent practices.
- Expand some of these crimes, such as theft and fraudulent practices, to take into account technological advances.
- Deal with the offence of cruelty to animals along with other crimes against morals and decency.

## **5. Sentencing**

### **5.1. Sentencing Guidelines**

*Introduction:*

There are several issues concerning sentencing in the PC that need to be addressed. For example, with respect to structure, the PC currently deals with the sentence, as well as aggravating factors, for each offence in the same section as the offence. An alternative is to have a separate part setting out Sentencing Guidelines, which have general application to all offences. The following are the types of issues to consider.

*Types of Sentences and Sentencing Factors:*

The Sentencing Guidelines could specify the different sentences and the types of factors to consider when determining which sentence to impose. Currently, the PC appears to only

specify punishment by death, imprisonment or fine. There are, however, a range of other sentences that could be considered for inclusion in the PC. These include: house arrest; community service; supervision; a treatment program (for example, where there is a drug or alcohol related offence or where there are behavioural issues and it is thought that treatment will reduce the likelihood of the offender committing further crimes); probation; fines; or restitution (where payment is made to the victim or victim's family). With respect to fines, the currency and value of the fines set out in the PC need to be reviewed. In particular, there is the obvious need to replace the Somali shilling with the Somaliland currency (Somaliland shilling), and the amounts require review to take into account inflation.

Moreover, the PC could include guidelines on which sentence is the most appropriate in the circumstances. For example, imprisonment should be used only where it is necessary to protect the public, and where the seriousness of the crime justifies incarceration. Community service may be appropriate where the accused does not pose a threat to the public, and where he or she has particular skills that could be of service to the community.

#### *Grading of Offences and Aggravating and Mitigating Circumstances:*

The PC currently deals with the specific sentence and aggravating factors in the same sections as the particular crimes. An alternative to this approach is to include, in the Sentencing Guidelines, a table with grades of offences and their sentences. In order to do this, it would be necessary to grade each offence and decide upon maximum and minimum sentences for each grade of offence. The Sentencing Guidelines would also include aggravating and mitigating factors that would apply to all offences. Any factors which apply only to a particular offence would be included in the specific section dealing with the specific offence. Such an approach would ensure consistency in the imposition of sentences.

#### *Recommendations:*

- Consider whether the PC should set out the sentence when dealing with each offence or whether there should be a separate section with Sentencing Guidelines specifying: the different grades of offences; sentencing factors; general aggravating and mitigating factors.
- Consider other types of sentences, such as, community service, house arrest, probation, treatment, supervision, and restitution.
- Review and update the monetary values for fines in the PC.

## **5.2. The Death Penalty**

### *Introduction:*

Article 24 of the Constitution guarantees the right to life with the exception of the death penalty. The PC currently imposes the death penalty for certain offences, such as, murder and some crimes against the State. Although human rights and customary international law support abolition of the death penalty, Somaliland's adherence to *Sharia*, which prescribes the death penalty for particular crimes, means that abolition may be unrealistic. Nevertheless, under both human rights and *Sharia*, there are several safeguards for the accused person which should be in place before the death sentence can be carried out. Moreover, there is certainly room for scholarly discussion on interpreting *Sharia* in line with international

human rights norms. Accordingly, the issue of the death penalty requires consideration with input from a *Sharia* Law expert.

### *Human Rights and Sharia:*

Article 6 of the ICCPR guarantees the right to life. Article 6 (2) provides that in countries which have not yet abolished the death penalty, the sentence may be imposed “only for the most serious crimes.” Moreover, the Second Optional Protocol to the ICCPR, adopted by the UN General Assembly in 1989, calls for total abolition of the death penalty. In the African context, Article 4 of the ACHPR provides that “[h]uman beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”<sup>57</sup>

In a general comment on Article 6 of the ICCPR, the UN Human Rights Committee has stated that “the expression ‘most serious’ must be read restrictively to mean that the death penalty should be quite an exceptional measure.”<sup>58</sup> Offences such as economic crimes, victimless offences, or crimes of a religious or political nature, including acts of treason, espionage and other vaguely defined acts usually described as “crimes against the State”, cannot be characterised as “most serious crimes”. According to the HRC, imposition of the death penalty in such cases violates Article 6.<sup>59</sup> Accordingly, with respect to Somaliland, it is recommended that the death penalty, for certain offences against the personality of the State, be reviewed.<sup>60</sup>

While *Sharia* prescribes the death penalty, it is only for certain crimes. Murder is among those crimes, as reflected in the PC. However, under both human rights and *Sharia*, there are several safeguards which need to be met before the death penalty can be carried out.

### *Safeguards for the Accused under Human Rights and Sharia:*

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<sup>57</sup> There is also a Working Group on the Death Penalty and Extra-Judicial Killings in Africa which is working to achieve abolition of the death penalty in Africa. While 36 African States still retain the death penalty, 22 of these countries have a moratorium on executions and some death sentences are commuted to life. See Report of the 53<sup>rd</sup> Ordinary Session of the African Commission on Human and Peoples’ Rights, 9-23 April 2013 (<http://www.achpr.org/sessions/53rd/intersession-activity-reports/death-penalty/>).

<sup>58</sup> General Comment 6 on Article 6 of the International Covenant on Civil and Political Rights, adopted on 27 July 1982, para. 7.

<sup>59</sup> Concluding observations of the Human Rights Committee: Libyan Arab Jamahiriya, UN document CCPR/C/79/Add.101, 6 November 1998, para. 8. The Committee has also expressed concern about the availability of the death penalty for drug-related crimes (Concluding observations of the Human Rights Committee: Kuwait, UN document CCPR/CO/69/KWT, 27 July 2000, para. 13). Concluding Observations of the Human Rights Committee: Libyan Arab Jamahiriya, UN document CCPR/C/79/Add.101, 6 November 1998, para. 8. In relation to the restriction of the death penalty to the “most serious crimes”, the Committee has, in particular, expressed concern about “very vague categories of offences relating to internal and external security” (Concluding observations of the Human Rights Committee: Kuwait, UN document CCPR/CO/69/KWT, 27 July 2000, para. 13); about vaguely worded offences of opposition to order and national security violations (Concluding observations of the Human Rights Committee: Viet Nam, UN document CCPR/CO/75/VNM, 26 July 2002, para. 7); and about “political offences... couched in terms so broad that the imposition of the death penalty may be subject to essentially subjective criteria” (Concluding Observations of the Human Rights Committee: Democratic People’s Republic of Korea, UN document CCPR/CO/72/PRK, 27 August 2001, para. 13). *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/1999/39, 6 January 1999, para.63. The latter report also specifies that the same principle should apply to adultery, prostitution and matters of sexual orientation. The Somaliland PC however does not prescribe the death penalty for such acts.

<sup>60</sup> See PC, Part I, Crimes against the Personality of the State.

Based on both *Sharia* and human rights law, Somaliland should ensure that safeguards are in place if the death penalty is to be retained.

The UN Economic and Social Council has set out safeguards on guaranteeing protection of the rights of those facing the death penalty (“Safeguards”).<sup>61</sup> Many of these are also consistent with *Sharia* principles. In particular, the death penalty should only be imposed when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.<sup>62</sup> Pursuant to *Sharia*, for certain crimes, such as murder, where the death penalty is prescribed, evidentiary requirements are very stringent. The accused person must either have confessed, or been found guilty based on the testimony of at least two witnesses without any doubt that he or she committed the crime.<sup>63</sup> Accordingly, the burden of proof is higher than the “beyond reasonable doubt” burden, commonly found in many jurisdictions.

An example of the application of such stringent evidentiary safeguards is contained in the new Maldivian Penal Code.<sup>64</sup> It requires that:

- (i) A defendant may not be convicted of an offence based on a confession unless he or she freely testifies in open court and under the advice of counsel, confessing every element of the crime.
- (ii) All witnesses that provide the testimony establishing the proof required must undergo evaluation to establish their capacity and competence to tell the truth on the matters at issue.
- (iii) Evidence must not be contradicted. If the testimony of any witness, or any portion of the testimony of any witness, including the defendant, is contradicted by the testimony of another witness, that witness’s testimony may not be considered as meeting the requirements of proof.
- (iv) There is automatic appeal on all findings of fact and law.

Furthermore, the death penalty may only be carried out pursuant to a final judgment rendered by a competent court after legal process, which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the ICCPR, including the right to adequate legal assistance at all stages of the proceedings.<sup>65</sup> Pursuant to *Sharia*, a life cannot be taken without due process of the law.<sup>66</sup>

According to the Safeguards, accused persons must also have the right to appeal, and to seek pardon or commutation of their sentence.<sup>67</sup> As well as due process of the law, *Sharia* principles also stipulate that it is better to forgive than to err in punishment.<sup>68</sup> As seen in the

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<sup>61</sup> Approved by Economic and Social Council resolution 1984/50 of 25 May 1984.

<sup>62</sup> Safeguards, para. 4.

<sup>63</sup> “Avert the hudud punishment in case of doubt...for error in clemency is better than error in imposing punishment”. See Al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuh* (Arabic) (1997) Vol. 7, p. 5307.

<sup>64</sup> Section 1204 of the new Maldivian Penal Code. See Final Report of the Maldivian Penal Law.

<sup>65</sup> Safeguards, para. 5.

<sup>66</sup> Qur’an, chapter 6: 15 (Do not kill a soul which Allah has made sacred except through the due process of the law).

<sup>67</sup> Safeguards, paras. 6 and 7.

<sup>68</sup> Qur’an, chapter 6:15 and Hadith: Sunan At-Tirmidhi (“Avoid applying legal punishment upon the Muslims if you are capable. If the criminal has a way out, then leave him to his way. Verily, it is better for the leader to make a mistake forgiving the criminal than it is for him to make a mistake punishing the innocent.”)

above Maldivian example, accused persons in death penalty cases have an automatic right of appeal on all findings of fact and law.

Moreover, the death penalty should not be carried out in cases where the accused is a minor, suffers from a mental illness or incapacity, or is pregnant.<sup>69</sup>

In sum, while abolition of the death penalty may be contrary to Somaliland's adherence to *Sharia*, it can nonetheless incorporate strict safeguards within the PC in accordance with international human rights law and *Sharia*.

#### *Recommendations:*

- Review the PC to ensure that the death penalty is only applied in the most serious cases.
- Incorporate safeguards in the PC to ensure that the accused receives a fair trial, which must include the right to adequate legal representation.
- Include an automatic right of appeal on all matters of fact and law in all cases where the death penalty may be applied.
- Include the right to seek pardon or commutation of sentence.
- Either the PC, or relevant rules of evidence, should specify very strict evidentiary requirements in death penalty cases, in particular, a high burden of proof requiring proof beyond any doubt.
- Ensure that the PC specifies that the death penalty will not apply to the mentally ill or mentally incapacitated, minors, pregnant women or women with dependent infants.

## **6. The Way Forward**

### **6.1. Roadmap for Reform**

This discussion paper has identified several issues which require further consideration by the LRC, relevant justice sector stakeholders in Somaliland, and legal experts. It is necessary for the LRC to map out how the reform process will take place. A law reform expert will be provided by the Horizon Institute to work with the LRC to produce a roadmap for reform.

### **6.2. Consultations**

A roadmap for reform should include several opportunities for consultations with relevant justice sector stakeholders in Somaliland, such as people with day to day practical experience of the PC. They should be given ample opportunity to constructively contribute to the PC reform process. The roadmap should include a process for consultation through discussions

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<sup>69</sup> Article 6(5) of the ICCPR: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women." Article 5(3) of the African Charter on the Rights and Welfare of the Child states: "The death sentence shall not be pronounced for crimes committed by children". Article 2 of this treaty specifies that the term "child" refers to anyone under the age of 18. Paragraph 3 of the Safeguards provides: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane." In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "to exclude pregnant women and mothers with dependent infants from capital punishment" and "not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person".

with principal stakeholders and questionnaires for different users, including lawyers, judges, court staff, and members of the public, in order to receive feedback.

### **6.3. Experts**

The reform process requires input from experts. In particular, work on the PC would benefit from experts in *Sharia*, customary law and penal law. One of the issues to consider is how the three separate systems of law can be harmonised.

## **Conclusion**

The PC in its current form is outdated and fails to reflect the current political, social and religious context in Somaliland. Nor is it user friendly in the way it is drafted and structured.

As outlined in this paper, there are several areas in the PC which could benefit from urgent reform. Of particular concern are some of the crimes against the “personality of the State” and the application of the death penalty in such cases. These should be reviewed in light of international humanitarian and human rights law. Offences which restrict the rights to freedom of expression and association should also be reviewed to ensure that they cannot be used as a tool for political oppression.

With respect to offences against religion, the PC should reflect the principle of equal protection of the law to ensure that all religious beliefs are equally protected. However, there should be room for scholarly discussion in order to ensure that the right to freedom of expression is not disproportionately restricted.

The treatment of crimes committed for reasons of “honour” is of particular concern. They should not attract lesser sentences. Indeed, international human rights law requires that where a crime is committed for reasons of “honour”, it be treated as an aggravating factor. The PC’s treatment of sexual offences is also outdated and will need to be harmonised with the draft Rape Act, which is yet to become law in Somaliland.

The PC further requires review in light of technological advances and developments in financial crimes. It should also give more detailed consideration to environmental crimes, crimes relating to human trafficking and forced labour, drug offences and offences relating to the use, trade and manufacture of firearms and explosives. Drafters and relevant stakeholders will also need to decide whether certain international crimes, such as terrorism and piracy, should be dealt with in separate legislation or be incorporated in the PC.

The sentences in the PC require particular attention. In some cases, they are disproportionately harsh, and in others, too lenient. They need to reflect the gravity of the offence and could be expanded to include house arrest, community service, treatment, and restitution. Moreover, while abolition of the death penalty is unrealistic in Somaliland, there is, nevertheless, much room for discussion and reform in order to ensure that implementation of the death sentence is in line with international human rights and *Sharia*. In particular, any rules of evidence should incorporate stringent evidentiary requirements in death penalty cases.

Lastly, any new draft of the PC will require a consideration of *Sharia* and customary laws in order to reflect Somaliland's social and religious values and extensive consultations with stakeholders and users. Where possible, provisions should be drafted in line with human rights law. Indeed, many international human rights provisions are mirrored in the Somaliland Constitution. Through a process of consultation, planning, and technical support from the Horizon Institute, it is hoped that the LRC can produce a PC that is clearly written, and can facilitate fair and efficient delivery of criminal justice.