



AUGUST 2020

Series One

A COLLECTIVE FAILURE

*How Somaliland's Criminal
Justice System Harms Children
and What We Can All Do About It*



WHY A SERIES DEDICATED TO CHILDREN ACCUSED OF CRIMES

Children, the world over, are among the most vulnerable members of society. As adults, we all have an obligation to protect them. Whether this responsibility is grounded in morals, religion, cultural norms or the law, it is an inescapable fact that adults must guide children as they grow and mature. Central to our role in keeping children safe from harm is remembering that children are children. They are not as physically, mentally or emotionally developed as adults and, because of this, we must treat them differently. Parents, extended family, neighbours, teachers, the government and society at large all have a part to play in our collective responsibility to nurture children into responsible citizens who can contribute to the well-being and progress of society.

Yet, adults are failing children throughout the world. Somaliland is no different, as the experiences of children caught up in the criminal justice system show. The laws of Somaliland acknowledge that children are not adults and create legal duties that safeguard children who commit crimes. Children 14 years and younger cannot be arrested, charged, prosecuted, convicted and imprisoned. Children who are 15 to 17 years of age can **only** be imprisoned as a last resort and for the shortest time possible. These legal protections are intended to ensure the criminal justice system treats children as children, and not as adults cast aside as criminals. These laws, however, mean nothing and do nothing to shield children unless adults respect them and work to uphold them.

Each one of us can be part of the solution by demanding a criminal justice system that does not damage children. This series attempts to make accessible to the public the injustices that children who are arrested, detained and prosecuted experience. The series also puts forward feasible suggestions about what needs to be done to create a more just system in practice, by working to respect both the spirit and the letter of the law. It features five topics: (1) why prosecuting children 14 years old and younger is unlawful; (2) how holding children in police stations before and during trial punishes them before they are even convicted; (3) how children are getting harsh sentences for relatively minor offences; (4) how the criminal justice system is functioning as a replacement for family responsibilities, community interventions and solidarity and government educational and social services and (5) what those working in the criminal justice system can do now, with little to no financial resources, to make sure each child is treated like a child. The law promises to defend and respect all of us, including children who have committed crimes. It is our obligation to make sure the law works for everyone.

SERIES ONE:

CRIMINALLY PUNISHING CHILDREN CONSIDERED TOO YOUNG TO FULLY UNDERSTAND RIGHT FROM WRONG

Children who are 14 years old or younger at the time they commit a crime cannot, according to the law of Somaliland, be arrested, charged, prosecuted and imprisoned. But they routinely are arrested, charged, prosecuted and imprisoned.



Mohamed with his mother Ikran at home.

Mohamed Ibrahim Hussein¹ was 14-years-old when he was arrested in Hargeisa. The police went to his house looking for him. But his mother, Ikran, told the police she did not know his whereabouts. The police then went to his school; the headmaster gave the same response, saying he did not know where Mohamed was. They were both too afraid to let the police speak with Mohamed. They did not want him to be arrested. The police finally threatened to arrest Ikran if she did not turn her son over to the police.² Because

¹ Mohamed was provided legal assistance by *Horizon*. His mother signed a release for his photo and story to be used in the hopes that his example can improve how the criminal justice system treats children.

² This is a common practice used by the police to force a person accused of a crime, especially boys and young men, to turn themselves in or have their family turn them in. It is known as proxy or hostage detention. It is unlawful under Article 26 of Somaliland's Constitution.

she had a young daughter she could not leave alone, she took Mohamed to the police station. The police arrested him on the spot for allegedly stealing a phone. The only evidence they had was someone accusing him. They took Mohamed from his mother and put him in a cell.

For 5 months, the police held him at Mohamed Mooge Police Station in Hargeisa. Mohamed had not been convicted by a court of law. He was being detained while the police tried to find more evidence. For these 5 months Mohamed lived in a small concrete cell with other male children and adults accused of crimes. He lost his freedom. He missed out on school. He did not have any reading material to learn from. His mother had to bring him food 3 times a day. For 5 months, his life, and the life of his family, were completely altered. But the truly tragic part of his story is that Mohamed should never have been arrested and held at the police station in the first place because he was only 14-years-old.

Children who are 14 years old or younger when they are said to have committed a crime cannot be arrested, charged, prosecuted or sentenced by a court.³ It is not until children are 15 years old that the criminal justice system can punish them.⁴

There is a good reason for this law. For a person, either a child or an adult, to be held responsible for a crime, they must fully understand what they are doing and the possible consequences of their actions. If they do not, then they cannot be criminally sanctioned and sent to prison. This is why courts cannot convict people who are clinically insane.⁵ The same basic principle applies to children 14 years and younger. Their mental capacity prevents them from fully comprehending right from wrong so they cannot be subjected to criminal penalties.

This is one way we as a society take care of young children. Somaliland has chosen the minimum age of 15-years-old for when criminal punishment of children is appropriate. This law embodies our shared judgment that children who are 14 years or younger are still growing up and cannot fully distinguish right from wrong. Consequently, they cannot fully grasp what society permits and what society condemns or wholly appreciate the likely outcome of their actions. They do not have the experience and reasoning required to understand that they are committing a crime. So the police, prosecution and courts cannot punish them.

Treating children in this manner may seem unfair, wrong or misguided, especially if a child is accused of a very serious crime like rape or murder. But it serves to protect children, who by definition lack the necessary maturity, from criminal punishment. In Somaliland, parents or the customary system can, and should, hold children 14 and younger accountable when they do something wrong.⁶ But the law clearly prohibits the police and courts from handling their case, as they would for adults, and imprisoning them at police stations and prisons where they are held together with grown-ups.

³Article 10(1), Somaliland Juvenile Justice Law (2007).

⁴Article 10(2), Somaliland Juvenile Justice Law (2007).

⁵Article 50, Somaliland Penal Code (1962).

⁶The age when children can be subjected to criminal justice varies widely from 6 to 18 years old from country to country. How different countries deal with children deemed too young for criminal penalties also varies. Some provide a separate accountability system that is intended to be more child friendly and can function very similar to criminal justice systems with detention being a sentencing option. See, Penal Reform International, *Justice for Children Briefing: The minimum age of criminal responsibility*, (2013).

Guaranteeing children receive the security this law provides should be easy. It is not. In Somaliland, the exact age of a child is often unclear because there is not, in most cases, written proof like a birth certificate. Police reports often record children as 15 or older and prosecutors and judges usually accept this at face value. If a police report lists a child as 15 or older, but either the child or a parent says they are 14 years or younger, the parent or lawyer must prove their age. But this is extremely difficult when documentation showing age is not commonly kept. When the age of an arrested child is questioned and there is no written evidence, a judge can order a medical exam to determine age.⁷ This approach suggests a sound policy until you think about it. Children grow physically at different rates. A 14-year-old could easily look like a 15-year-old or even a 16-year-old. When an age examination incorrectly finds a child is 15 years or older, and there is no other evidence of age, it can mean that a child who society believed too young to commit a crime will be spending years in prison.

Mohamed was 14-years-old when he was arrested. His mother found legal assistance and proved his age to a court in Hargeisa and he was released. He returned home to his mother and sister and started attending school again. Mohamed ultimately received the protection of the law, but only after being wrongfully held in a police station for 5 months.



Mohamed studying at home.

⁷Article 64(1), Somaliland Juvenile Justice Law (2007).

Imprisoned for Weeks, Months and Even Years at Police Stations and Prisons

Like Mohamed, other children who are too young to be arrested, charged, prosecuted and imprisoned have spent months at police stations and prisons.

All the children listed below were provided legal assistance by *Horizon*. They represent a sampling of children 14 years and younger accused of crimes in locations in Somaliland where *Horizon* works. Only first names are used to respect their privacy.

The ages listed are those provided to *Horizon* by the children and their parents. Without a reliable way to verify age in Somaliland, we gave children and their parents the benefit of the doubt and helped them try to prove age. If the parent could not find evidence that their child was 14 years or younger, or an age determination declared the child was 15 or older, the case would move forward in the court even if the child and the parent still disputed it.

The following boys all spent time in various police stations and prisons in the Hargeisa area.

- Salman (13) was detained at Daloodo Police Station for allegedly throwing rocks at a woman. He was held for 5 months until his father succeeded in proving his age and the court ordered him released in June 2019.
- Barkhad (14) was arrested for fighting and detained at Daloodo Police Station. He was held there for a month until he was released because of a customary agreement in October 2019.
- Ahmed (14), Omar (14) and Saeed (14) were arrested for stealing a phone. A Hargeisa court found they were innocent and ordered them released from Daloodo Police Station in February 2020 but only after they had spent 7 months in custody.
- Omer (14) was arrested and detained at Daloodo Police Station for allegedly stealing a phone. He could not prove his age. He was convicted of theft in October 2019 and sentenced to 1 year in prison.
- Hamse (13) was arrested for robbery in Hargeisa and detained at Daloodo Police Station in February 2020. He said he was 13 years old but had no proof. The Hargeisa Regional Court convicted him to 2 years and 6 months. The Appeal Court upheld this judgment. He is serving his sentence in Mandera Prison.
- Mohamed (14), Hassan (14) and Ahmed (14) spent 2 months in custody at Hargeisa Central Police Station before the court found they did not steal a phone in April 2019.
- Ismail (14) was accused of injuring someone and was held at Hargeisa Central Police Station. He was released in April 2020, once his family reached a customary agreement, but only after he spent over 2 months in detention.
- Mohamed (14) and Abdiqani (14) were arrested for fighting. They were held at Kood Buur Police Station for 8 months until they were acquitted in October 2019.

- Saddam (14) was arrested and detained at Kood Buur Police Station. He could not prove his age. He was convicted by a court in Hargeisa of theft in November 2019 and sentenced to 3 months.
- Abdiaziz (14), Abdirahman (13), Hamse (12) and Mubarik (14) were arrested in December 2019 and detained at Kood Buur Police Station. They could not produce proof of their age. They were convicted of injuring someone and sentenced to 7 months.
- Yusuf (14) spent 3 months in Kood Buur Police Station for injuring someone before a court found he did not do it and ordered him released in January 2020.
- Saddam (13), Suhayb (13), Guleid (13), and Khadar (13) were arrested and detained at Kood Buur Police Station for fighting. They were released after 2 weeks once a customary agreement was reached in May 2019.
- Abdiqani (13), Sa'ad (13), Yusuf (14), Ridwan (12), and Suhayb (11) were accused of stealing a phone and held at Kood Buur Police Station in June 2019. They were released after 1 week once their families reached a customary agreement with the person who was accusing them.
- Hamse (14) and Hashim (12) were arrested and detained at Kood Buur Police Station for fighting. They were held for almost 1 month before their families entered into a customary agreement and they were released in September 2019.
- Abdiaziz (14) was arrested and detained at Kood Buur Police Station in December 2019. He was released on the basis of a customary agreement in February 2020.
- Hanad (14) was arrested and held at New Hargeisa Police Station. He could not prove his age. He was convicted of robbery and sentenced to 2 years in prison in April 2019.
- Ahmed (14) was arrested and detained at New Hargeisa Police Station for throwing a rock at someone. He was held there for 1 month until his family came to a customary agreement with the victim and he was released in July 2019.
- Mustafe (14), Mohamed (14), Hassan (13) and Fadhi (13) were detained at New Hargeisa Police Station after being accused of injuring someone. They were held at the police station for nearly 2 months before their families came to a customary agreement and they were released in July 2019.
- Badri (10) was arrested and detained at New Hargeisa Police Station for over 2 months. He had injured a woman. The police were holding him until his mother – who is a street vender – paid the victim. Once she did, he was released in February 2020.
- Mohamed (14) was arrested and detained at New Hargeisa Police Station for fighting. He was released after 1 month on the basis of a customary agreement in March 2020.

- Khalil (14) was arrested and detained at New Hargeisa Police Station in March 2020. He could not prove his age. He was convicted of robbery and is serving a sentence of 1 year and 6 months.
- Eid (13) was arrested and detained at New Hargeisa Police Station. After 1 month at the police station, he was released on the basis of a customary agreement in June 2020.
- Khalid (12), Sakariye (13) and Liiban (13) were all arrested and detained at Qudhac Dheer Police Station in February 2020. They allegedly set a can of insect spray on fire, hurting a woman. They were released the same month on the basis of a customary agreement.
- Ayaanle (12) was arrested after a woman claimed he stole money from her. He was held at Qudhac Dheer Police Station and released after 1 week when his family made a customary agreement with the woman in March 2020.
- Abdirashid (13) was arrested and detained at Qudhac Dheer Police Station for fighting in March 2020. He was released the same month on the basis of a customary agreement.
- Yassin (13) was arrested and detained at Adan Shiine Police Station in Hargeisa for fighting. He was released after 1 week on the basis of a customary agreement in February 2020.
- Keyse (14) was arrested for fighting and spent a week at the Abdi Eidan Police Station before his parents entered into a customary agreement and he was released in October 2019.
- Nasrudiin (14) was arrested and detained at Abdi Eidan Police Station for theft. He could not prove his age. He was convicted in November 2018.
- Amin (14) was arrested in February 2020 and detained at the Abdi Eidan Police Station. He could not prove his age and was convicted of robbery and sentenced to 18 months.
- Yahye (14) was arrested and detained at the Shiekh Nour Police Station in January 2020. The Hargeisa District Court convicted him of theft and sentenced him to 5 months in prison.
- Ya'cub (14) was convicted by a court in Hargeisa for stealing a phone in February 2020. His mother has no documentation of his age and is unsure exactly whether he is 14 or 15 years so refused to swear to court under oath. He is serving his sentence at Hargeisa Prison.
- Ismail (13) was convicted of robbery and sentenced to serve 3 years at Hargeisa Prison. His case was brought before the Maroodi-Jeex Appeal Court and they released him because of his age in March 2020. Ismail had already spent 1 year in prison.

- Ayaanle (13) was convicted by the Hargeisa Regional Court of rape in May 2020. He is a street child and had no parent to assist him to prove his age. He is now serving a 7-year sentence in Hargeisa Prison.
- Abdisalaam (14) was convicted by the Hargeisa Regional Court of injuring someone with a knife in May 2020. He is serving a 3-year sentence at Hargeisa Prison.
- Hamse's (9) court documents listed him at 15-years-old. But he looked much younger and claimed to be only 9 years old. There was no age determination at court and he was convicted of theft without a lawyer or a parent present in 2019. He was sentenced to 1-year imprisonment for stealing money. He served his sentence at Mandera Prison and was released in February 2020.
- Abdiqani (14) was convicted of theft by a judge in Hargeisa and he was sent to serve a 2-year sentence at Mandera Prison. On appeal, a judge reduced his sentence and he was released in April 2020. But his young age was never recognized and he spent 10 months in custody.

Children are even held in Hargeisa at the Criminal Investigations Division (CID) alongside adults charged with very serious crimes like rape, murder and terrorism.

- Suhayb (14), Abdiqani (14) and Hamse (14) were arrested and held at Hargeisa CID in September 2019. A court found there was no evidence that they stole a phone and let them go. But only after they spent 4 months in the CID.
- Mohamoud (14) was detained at Hargeisa CID for 8 months. He was arrested as a witness to a murder. The court finally ordered him released in November 2019.
- Awale (11) was detained at Hargeisa CID for stealing money. He was held for 1 month and then released on a customary agreement in June 2019.
- Abdinajib (13) moved in with his aunt as a baby because his parents could not take care of him. He was arrested by Hargeisa CID and convicted of rape in January 2020. Court documents say Abdinajib is 15-years-old. His aunt says he is only 13-years-old but she has no proof of his age. The Hargeisa Regional Court convicted him to 4 years and then the Appeal Court reduced his sentence to 3 years and 4 months. He is serving his sentence in Hargeisa Prison.

This problem is not limited to the capital city of Hargeisa. It happens in other urban areas and small towns.

- Abdiwakil (14) and Ali (13) were arrested and detained at Burao Central Police Station for fighting. They were released after 2 weeks when their families agreed to a customary agreement in April 2019.
- Abdirisaq (14) was held at Burao Prison for 4 months before the court in Burao convicted him of robbery in September 2019.
- Abdi (14) was convicted by the court in Burao of robbery and sentenced to 3 years in Burao Prison in March 2020.

- Ahmed (13) was arrested and held at Burao Prison for injuring someone. He was there for 2 weeks until his family reached a customary agreement in May 2020.
- Suleiman (13) was arrested and held at Burao Prison after he was accused of stealing a phone. His parents paid for the phone and he was released after 1 week in prison in June 2020.
- Hamse (14) was convicted of robbery by the Wajale Court. He was sentenced to 8 months in prison in July 2019.
- Ahmed (14), Abdiwahab (13), and Abdirahim (12) were arrested by police in Gabiley in September 2019. They were alleged to have been involved with a protest in Kala-Baydh. There was no evidence so the court ordered their release.
- Mustafe (14), Saddam (14) and Ahmed (14) were convicted of robbery and sentenced to 6 years at Gabiley Prison. They were tried and convicted of robbery without a lawyer. On appeal their sentence was reduced and they were released in January 2020. But this was after they had spent 3 months in custody.
- Hamse (14), Ismail (14), Aidarus (13), and Omar (12) were convicted by the Gabiley Court for injuring someone and sentenced to 3 years in prison in January 2020.
- Khalid (13) and Hamse (14) were convicted of murder by the Gabiley Regional Court in October 2018. The Maroodi-Jeex Appeal Court upheld the sentence. Even though it was clear the boys are too young to be prosecuted, the court refused to release them for their own “security.” Meaning that because the victim’s elders misused the *diya* [blood compensation money] that the boys could be in danger if released. Khalid was finally released in April 2020. Hamse was released in June 2020.

And while the majority of children arrested are boys, a small number of girls who are 14 years or younger also are accused of crimes.

- Zamzam (13) was arrested by the police in Baligubedle for fighting and released after her family made a customary agreement in February 2020.

If these children had written proof of their age, none of them would have been arrested, charged, prosecuted or imprisoned. The harm done by weeks, months and years of detention would have been avoided.

What Needs to Change?

If families had written documentation of the date their children were born, they would have the evidence needed to prove that their children are too young to arrest, too young to prosecute and too young to imprison. Ideally, this would be a birth certificate produced by the hospital on the day that children are born. The reality, however, is that a significant number of children, especially outside the main towns, are not born in a hospital, or with the help of a midwife in a health clinic who could provide a certificate. Until there is reliable proof of age like birth certificates in Somaliland, children who society, and the law, consider too young for criminal punishment will continue being held in police stations and sent to prison.

BECOMING A PART OF THE SOLUTION

What Can You Do to Help?

We all have a part to play in watching over children so they are not arrested, charged, prosecuted and imprisoned.

- If you are a parent, make sure you have written documentation on hand that shows the age of your child. If you do not have a birth certificate, find and keep any medical records, school records or time stamped photographs that can provide evidence of your child's age if they are ever arrested.
- If you are not a parent but still want to be part of the solution in your community, share this information with your family, friends, neighbours and colleagues. Parents and guardians of children need to know that children 14 years and younger are too young to be criminally punished but that it will continue to happen if there is no way to prove their age.
- If you are an elder/community leader, discuss these issues at meetings. Decide how you and your colleagues can help safeguard children 14 years and younger in your community from being arrested and imprisoned.
- If you are a teacher or work in a school in any capacity, share this information with the parents of your students. Making sure parents know this law can help keep your students out of prison and in school.
- If you are a medical professional, tell your patients the importance of registering their child's birth and share with them information about how this can be done. Birth certificates are not common practice in Somaliland so explaining to patients with children how to register their child's birth will give that parent the necessary document to show the child's age if that boy or girl is arrested in the future.
- If you work in an NGO involved with health issues, emphasize the importance of hospitals and health clinics registering births.
- If you are a journalist or work in the media field, you have a critical role to play in raising community awareness about the law. Find out what is happening on this issue in your town and write a story about it. The more the public knows that the law does not allow children 14 or younger to be arrested, charged, prosecuted and imprisoned, the more likely it is the law will be respected.
- If you are a police officer, prosecutor or judge, you are central to upholding this law. If a child tells you his or her age is 14 years or younger, verifying this statement with their parents or legal guardian is a helpful first step. If you have any doubt to their age, using your discretion to decide in favour of the child would benefit that child's

future and keep them out of police stations and prisons filled with adults who, by example, can only be setting them on a destructive path. The state is far more powerful than children in conflict with the law, even those with strong family support. Every effort should therefore be made to use that power and authority to keep children in school, at home with their families and help them into becoming productive and responsible adults.

We would welcome suggestions from readers about how the subject matter of this report can be more widely disseminated to different audiences for the protection of all children in Somaliland.

Horizon Institute is working to advance the rule of law and human rights. Our reports and discussion papers explore issues identified through our work. They provide information and analysis intended to stimulate debate among the public, government institutions, the media, human rights groups, NGOs, independent bodies and donors and promote government policies based on respect for human rights, the rule of law and the encouragement of self-reliance.

To learn more, visit us at www.thehorizoninstitute.org and follow us on Twitter at @Horizon_SL and on Facebook at @HorizonInstituteSomaliland.

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All photos by Petterik Wiggers

