

Series Two of  
A Collective Failure

**IMPRISONING  
CHILDREN BEFORE  
A COURT DECIDES  
THEY ARE GUILTY**

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# INTRODUCTION

When children are accused of crimes in Somaliland, they are treated as if they are guilty. The police arrest and detain them, sometimes for weeks or even months, before a judge ever hears the evidence against them. Adults in Somaliland suffer the same fate. And police forces and criminal justice systems all over the world behave in a similar fashion. But this approach is wrong in law, and counter-productive in practice.

When someone, whether an adult or a child, is accused of a crime, the police should investigate and the prosecution should bring a case only if there is evidence. A judge should only convict if guilt has been proven beyond a reasonable doubt, and the public should wait until a court decides if a person is guilty before thinking of them as a criminal. This responsibility is all the greater when the accused is a child. In reality, however, often the determination to “teach them a lesson” overrides other considerations and children are treated as if they are guilty when they should be presumed innocent.

Safeguarding the right to be presumed innocent, unless and until proven guilty by a court of law, is vital to protecting children. Children are vulnerable and impressionable. Detaining them before and during trial exposes them to the very real danger of being ill-treated and, when locked up with adults as they are in Somaliland, of being corrupted by adults who have committed serious crimes. It also means they are stigmatised as criminals and likely to be bullied by their peers.

The law in Somaliland recognises these risks. There are clear legal protections specifically intended to protect children from these harmful consequences. *Imprisoning Children Before a Court Decides They Are Guilty* details how easily children are being imprisoned before they are found guilty. The report also discusses the laws that, if implemented, would protect their right to be treated as innocent until proven guilty.

This report is the second instalment in the five-part series, *A Collective Failure: How Somaliland's Criminal Justice System Harms Children and What We Can All Do About It*. This series attempts to share with the public the injustices children accused of crimes experience and what we can all do to help create a more just system. It discusses four other topics in addition to how pre-trial detention punishes children before they are convicted: why it is unlawful to criminally punish children 14 years old and younger in Series One; how judges are sentencing children to long prison terms for relatively minor offences in Series Three; how the criminal justice system is functioning as a replacement for family responsibilities, community interventions and solidarity and government educational and social services in Series Four; and 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 in Series Five. Somaliland's laws safeguard children accused of crimes. We all have a responsibility to make sure these laws work for the protection of all children, including treating them as innocent until proven guilty.



## SERIES TWO:

### IMPRISONING CHILDREN BEFORE A COURT DECIDES THEY ARE GUILTY

*The law allows children who are 15 to 17 years old and being held at a police station or prison to be released to their parents while the criminal justice system processes their case. Yet, children are not receiving the protection of this law and are being imprisoned while their cases are heard at court.*



*Yahye at home after being acquitted.*

Police arrested 15-year-old Yahye Mustafa Jama<sup>1</sup> in February 2019. Officers came to his house and demanded that he come to Qudhac Dheer Police Station in Hargeisa. They said they would tell him why once he got there. His father went with him. At the station, the police said Yahye's neighbour had accused the boy of injuring him and they were arresting him for attempted murder. The police put him into a cell.

<sup>1</sup> Yahye was provided legal assistance by *Horizon*. His father 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.

Yahye's case went to trial and he remained locked in that cell until he was acquitted 9 months and 15 days later. There was no evidence that Yahye had tried to kill his neighbour so the court ordered him released from the police station. The injustice was not that the court handled his case. Because Yahye was 15 years old when he allegedly injured his neighbour, he was old enough under Somaliland law to be arrested, charged with a crime and prosecuted.<sup>2</sup> The injustice was that he was imprisoned before a court ever decided whether or not he was guilty.

Yahye was effectively punished for a crime he never committed. The law mandates that everyone is innocent until they are proven guilty.<sup>3</sup> It also states that depriving children of their liberty must be a last option.<sup>4</sup> Imprisonment is punishment and meant to be imposed only after a court of law finds an individual guilty of a crime. This is especially true for children. This means that when the police were investigating Yahye, when the prosecutor charged him, and when the court was hearing his case they should have respected his rights and allowed him to go home to his parents. Instead, he was held at the police station.

This did not have to happen. There is a legal process, known as bail, that allows for people accused of crimes to be let out of police stations and prisons and sent home while their case proceeds at court. The legal right of bail has two purposes: (1) to make sure the government does not needlessly penalise a person with imprisonment before they are convicted and (2) to ensure that the accused person will show up for trial. It is intended to keep people out of police stations and prisons until a judge has found them guilty. The objective is to make sure people are not simply detained until it is convenient to give them a trial, particularly when the police and prosecution are investigating an alleged crime.

Children have a broad right to have a judge consider releasing them on bail. The 2007 Juvenile Justice Law allows judges to assess whether or not to release children—people 17 and younger—to their parents or guardian no matter what they are accused of doing.<sup>5</sup> This is in stark contrast to adults—people 18 and over—who when accused of committing certain serious crimes such as rape and murder are not entitled to this legal protection.<sup>6</sup> But for children there are no crimes for which bail is not a possibility.<sup>7</sup> In every case,

<sup>2</sup> Article 10, Somaliland Juvenile Justice Law (2007) (hereinafter: "JL").

<sup>3</sup> Article 26(3), Somaliland Constitution (2001) and Article 9(1)(c), JL.

<sup>4</sup> Article 8, JL.

<sup>5</sup> Article 55, JL. Article 55(1) states that "Notwithstanding the provisions of any other law, a child may be released on bail into the care of his parents, guardian." The wording "notwithstanding the provisions of any other law" means that any limits on the right to bail in the Criminal Procedure Code, Penal Code, Public Order Law or any other law do not apply to children. Crucially, this allows bail to be considered for children no matter the crime they are accused of committing. In every case a judge must determine whether or not a child should be released from detention on bail. If he decides to grant bail, he must then set the conditions on which bail will be approved.

<sup>6</sup> Article 35, Somaliland Criminal Procedure Code (1963) (hereinafter: "CPC").

<sup>7</sup> Who is a child under the law? The JL is not a model of clear legal drafting and uses the term "child" in different ways. Article 1 says a "child" is anyone under 15 years old. In contrast, Articles 10 and 64 define a "child" as anyone under the age of 17 years old. One way to harmonize this inconsistency in drafting is to interpret the law in line with the Convention on the Rights of the Child (CRC) which sets the age of a child at persons who are under 18 years of age. Article 2 of the JL says the law must be interpreted in a manner consistent with the CRC, so this is a strong basis for saying "child" under the JL is anyone 17 and under. Another way to harmonize the differences in the term child in the JL is to compare Articles 47 and 55 of the law. Article 47 of the JL states that if the police arrest a child who is under 15 for their safety, or because they are committing a crime, they must immediately release the child to their parents because they are too young under the law to be punished by the criminal justice system. When this is contrasted with Article 55 where the judge may grant bail to a "child" it is clear the JL is intending this provision to apply to children who are 15 to 17 years old and that a "child" under the JL is someone 17 years or younger.

a judge must evaluate whether or not a child should be freed from detention while his or her case proceeds at court. They do not have to grant release, but they must at least consider it. This is one way the law recognizes that children are not adults. That children are more vulnerable because of their tender age and thus being locked in a police station or prison cell poses more of a threat to their future wellbeing.

Because children can be bailed regardless of the crime they are accused of, in each case of a child a judge must answer two questions: (1) Whether or not a child should be let out into the care of parents or guardians while his or her case proceeds at court? And (2) if yes, what conditions should be set to make sure the child comes back to court?

A judge's decision to let a child go during trial will depend on a variety of reasons. If the judge thinks the child might run away or commit another crime, then they probably will not order bail. But if a judge decides that it is unlikely the child will run away or commit a crime, and that they need to be in school and at home with their family, then he can free the child if certain criteria are met.

The conditions a judge sets when sending a child home on bail are intended to make sure the child comes back for court hearings. They can include returning to court at a certain time, giving the court something valuable that is only returned after the trial, or even promising to stay out of trouble.<sup>8</sup> Often the court requires someone, like a clan elder or parent, to promise they will bring the child back for court hearings. If these stipulations are not followed, then the child will be rearrested. In this way, bail allows the government to respect the right to be presumed innocent and to detain children only as an absolute last resort. At the same time, every precaution is being taken to make sure they come to court for their case.

A judge should have considered releasing Yahye to his father because of his young age. If he had been 18 he would not have been eligible for bail because he was charged with attempted murder. But because Yahye was only 15, he could have been released to his father. This was ignored. If he had been freed while his case was proceeding, he still would have had to come back to court. If he did not, Yahye would have been arrested again. Justice would have run its course. But he would have been treated as innocent and his imprisonment would have been the last rather than the first option.

The time Yahye spent imprisoned at the Qudhac Dheer Police Station affected both him and his family. During his trial, his father Mustafe spent hours at court waiting for a judge to hear his son's case. Because of delays in the case, his father said he had no time to work and ended up living on loans.

<sup>8</sup> Article 55(2) of the JIL states that the condition of bail for children should be the same as those set out under the Criminal Procedure Code. This requirement should not be confused with the right for bail to be considered. The right to have bail considered, which Article 59 of the Criminal Procedure Code revokes when an adult is accused of serious crimes, and conditions of bail are two separate issues. A condition is what a judge stipulates a person must do to be released from detention during trial. If a person has a right for bail to be considered and the judge thinks it is a good option, then he will set conditions.





*Mustafe, Yahye's father.*



*Engineer Yahye written on a door.*

I'm the only one who works in my family, but I had to quit my job. My children are all young and don't work. When I'm not working, my family has no source of income... There has been a massive financial impact...But I used to go to court every day. My worst nightmare was having my son brought to trial and sentenced without my knowledge.<sup>9</sup>

The challenges continued after Yahye was released. Before he was arrested, his goal was to become an engineer. Shortly after he was acquitted, his father said he was hesitant about returning to school.

Yahye's very sad about going back to school. He told me he wants to do technical training instead. We haven't agreed on anything yet. My son is afraid of getting teased and bullied by school children for getting arrested.

Yahye eventually did go back to school, but was a year behind the other teenagers his age.

<sup>9</sup> Interviewed in Hargeisa on 28 October 2019.

# Children Spending Days, Weeks and Months Imprisoned Before a Court Decides Whether or Not They Committed a Crime

Yahye is not an exception. There are other children like him who have been held at police stations or prisons throughout Somaliland for days, weeks or months while their cases proceeded at court. The outcomes of these cases may be different. Some were convictions, others customary settlements, and, like Yahye, many were acquittals. But the similarity is that all of these children were held during the time their guilt was being decided and they should have been treated as innocent.

All the children listed below were provided legal assistance by *Horizon*. They represent a sampling of children 15 to 17 years old accused of crimes in locations in Somaliland where *Horizon* works. Only first names are used to respect their privacy.

The following boys all spent time in police stations in the capital of Hargeisa before their guilt was determined.

- Abdifatah (17) and Assad (16) were arrested in October 2019 and held at Macalin Harun Police Station for four months. They were accused of injuring someone. They were acquitted in February 2020.
- Suhayb (17) was arrested in October 2019 and detained at Macalin Harun Police. He was accused of stealing. He was held for 4 months before being acquitted in February 2020.
- Sakariye (15), Mustafe (15), Subayr (16), Mustafe (15) and Amin (15) were arrested in February 2019 and imprisoned at Kood Buur Police Station. They were accused of injuring someone. The start of their trial was postponed because the medical report of the victim was continuously delayed. They were released in May 2019, after four months in police detention.
- Hamse (17) was held at Kood Buur Police Station for 3 months for allegedly injuring someone until he was released on a customary agreement in March 2020.
- Badri (16) was arrested and held at Kood Buur Police Station for fighting. He was there for 1 week before his family reached a customary agreement and he was released in March 2020.
- Khalid (17), Ahmed (15) and Saki (17) were detained at Kood Buur Police Station in July 2019. They were accused of injuring someone. They were held for nearly 3 months before they were released on the basis of a customary agreement in October 2019.
- Suhayb (17), Ahmed (16), Abdijibar (16), Mohamed (15), and Muhyadin (15) were arrested in February 2020 and held at Kood Buur Police Station for fighting. They were held for 12 days and discharged after their families reached a customary agreement in March 2020.

- Ridwan (17) and Shab'an (17) were arrested in January 2020 and held at Shiekh Nour Police Station. They were accused of throwing rocks at each other and disturbing the peace. After 6 months in detention without conviction, they were convicted to 6 months in June 2020. The boys were immediately released because they had already been imprisoned for 6 months at the time of conviction.
- Saddam (17) was arrested and held at Daloodo Police Station in September 2019. He was charged with theft and his case went to trial. He was held at the police station for almost 4 months before a court found him guilty and sentenced him to 1 year in December 2019.
- Abdikadir (16) was arrested and detained at Daloodo Police Station in connection with a theft of a mobile phone in February 2020. He was convicted in April 2020 of purchasing a stolen phone, not stealing it, and received a fine. He was in detention for 2 months.
- Khadar (17), Yahye (17), Mustafe (15) and Abdikadir (16) were detained at Qudhac Dheer Police Station in December 2019. They were accused of fighting at a wedding and injuring someone. These boys were held for 3 months before being found guilty in March 2020 and sentenced to 6 months.
- Amin (16), Sakariye (15), Salman (15) and Hamse (15) were arrested in January 2020 and held at New Hargeisa Police Station for fighting. They were there for 2 months and released for lack of evidence in March 2020.

This also occurs in other urban areas and small towns in Somaliland.

- Suhayb (17), Fathi (16), Abdinajib (15), Mohamed (15), Hamse (15) and Abdikadir (15) were arrested in October 2018 by the police in Gabiley. They were accused of theft. They were convicted and held between 1 to 3 months until their families paid the court ordered fine.
- Khalid (17) was arrested by police in Gabiley in December 2018. He was accused of injuring someone. He was held at the police station for 15 days before he was released on a customary agreement.
- Abdiqani (16), Awil (16), Sakariye (16), and Abdishakur (15) were accused of injuring someone and detained at Gabiley Police Station. 1 month later the Gabiley Court acquitted them and ordered them released in November 2019.
- Mohamed (15), Ali (15), Sakariye (16), Mawlid (16) and Ahmed (17) were detained at Gabiley Police Station in February 2019. They were accused of theft. They were held for 2 days before they were released on a customary agreement.



- Mohamed (17) was held at Baligubedle Prison for 2 months before his case of simple hurt was resolved in the customary system in November 2019.
- Nasir (17), Hamse (16), Guleid (17), Ibrahim (16) and Ridwan (17) were all detained at Wajale Police Station. They were accused of injuring someone. They were held in the police station for 4 days until their families came to a customary agreement in September 2019.
- Abdillahi (17) was arrested and charged with injuring someone. He was held at Wajale Police Station while the court heard his case. In April 2019, after he had been imprisoned for a month, a judge found him innocent.
- Jaleh (15) and Anas (15) were arrested and detained at Wajale Police Station for allegedly stealing jeans from a shop. They were from a border town in Ethiopia. One of their mothers paid for the jeans. They were let out in July 2019 after 2 months in the police station.
- Abdisalam (17), Jimaale (16) and Amin (16) were arrested in January 2020 and held at Wajale Police Station. They were detained for allegedly fighting and throwing stones at each other. They were imprisoned for 5 months while their families negotiated a customary agreement before being released in May 2020.
- Mustafe (16), Abdikarim (17), and Sharmarke (15) were arrested for fighting and injuring someone. They were held at Borama Prison for 1 month and a half until their families entered into a customary agreement in August 2019.
- Sahal (17) was arrested and detained in Borama Prison for 1 month, accused of theft. He was released on a customary agreement in October 2019.
- Abdirashid (17) and Omer (17) were arrested for damaging property and held in Borama Prison. They were imprisoned for 1 month and released in February 2020 after their parents paid for the damage they had caused.
- Subayr (16) was accused of stealing tyres and arrested in January 2020. He was detained at Borama Prison. His parents paid for the tyres and he was discharged in February 2020 after 1 month and 5 days in prison.
- Abdirisak (15), Muse (17) and Amin (15) were arrested and detained at Borama Prison after they were accused of robbery in January 2020. They were imprisoned for 45 days before they were acquitted in February 2020.
- Suhayb (16) was arrested and imprisoned at Burao Prison when someone accused him of stealing a phone. He was held there for a month until he was released on a customary agreement in November 2019.

- Mohamed (16), Abokor (15), Mohamed (16) and Abdifatah (15) were arrested in January 2020 for allegedly stealing a phone. They were held at Burao Prison. The court acquitted them in March 2020.
- Subayr (16) was arrested for purchasing a stolen phone. He was detained at Burao Prison while the court heard his case. He was convicted and sentenced to pay a fine. He was released once his family paid this fine in March 2020 after 3 months in prison.
- Abdirisak (17) and Ibrahim (17) were arrested and detained at Aynabo Prison. They were accused of stealing a phone. They were held without conviction for 2 months until their parents paid for the phone in April 2020.

Girls also have spent time in police stations and prisons before a court found them guilty or not guilty.

- Ugbad (15) and Maya<sup>10</sup> (17) were arrested and detained in Hargeisa at Daloodo Police Station in June 2019. They were accused of assisting in a rape. They were held for 5 months until their families paid a fine in October 2019.
- Muna (15) was arrested and detained at Kood Buur Police Station in Hargeisa for stealing money. After over a month in custody, the court ordered her released in July 2020 for lack of evidence.

If judges more frequently approved bail, the harm done to these children, and their families, by days, weeks and months in police station and prison cells could have been avoided.

## What Needs to Change?

Bail for all children, no matter the crime charged, needs to be considered by the court. Right now, children who are released during trial are the exception but the law stipulates that it can be used in all cases of children.<sup>11</sup> If they have a parent or guardian who can take responsibility for bringing them back to court, then they should be sent home. If they do not have a parent or guardian that can ensure they will come back to court, then it does not need to be granted. But the option of pre-trial release should at least be evaluated.

<sup>10</sup> Pseudonyms are used to protect the children's identities given the sensitive nature of the case.

<sup>11</sup> Article 55, JJJL.

# BECOMING A PART OF THE SOLUTION

## What Can You Do to Help?

We can all do something to help make bail better known and more commonly used throughout Somaliland.

- If you are a parent or guardian of a child, you have the most direct role. When your child is arrested, you should immediately go to the court and request that the judge releases your child while their case is being processed.

Be ready to explain why your child should be released.

If they are in school, tell the judge that.

If you work to help support your family, tell the judge that.

If this is the first time your child has ever been in trouble with the police, tell the judge that.

Also, tell the judge you understand that you need to bring them back to court and that you as their parent/guardian promise to do that.

Be prepared to provide this assurance in writing if requested to do so by a judge.

Advocating for your child to be allowed to go home will increase both the chances of your child being bailed and for bail to become more common throughout Somaliland.

- If you are a clan elder, you also have a pivotal role to play in making sure bail becomes the norm for children accused of crimes. For children, and also for adults, accused of a crime and held in police detention a judge often requires an elder to vouch for them. Accepting this role can help make sure a child is sent home and does not spend months in detention before they are convicted.
- If you are a teacher or work at a school, share this information with the parents of students. Making sure parents know this law can help keep your students out of prison and in school.
- If you work in an NGO involved with juvenile and child protection issues, tell the families you work with what bail is and how it can be used to protect children 15 to 17 years of age.
- 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 public needs to know that you are innocent until proven guilty and that the legal process called bail helps protect this right.



- If you are a police officer, prosecutor or judge, you are central to upholding this law. Make sure to tell children and parents that they have a right for bail to be considered and what this means. Taking the time to explain this legal protection can help make sure police stations and prisons are less crowded, and will also help you to protect the presumption of innocence.
- Everyone can help increase the use of bail. Most people do not know what it is and that it is essential to protecting an individual's right to be presumed innocent until found guilty. Share this knowledge with your family, friends, neighbours and colleagues. Tell them they can help their family to request bail if they are ever arrested. This will help protect children from the harm of being punished for a crime they did not commit and spare their families the distress and expense of having a child in detention.

*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.*

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