

Series Three of  
A Collective Failure

**SENTENCING  
CHILDREN TO  
SIGNIFICANT  
PRISON TIME FOR  
MINOR OFFENCES**



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# INTRODUCTION

All too often, prison is seen as the answer when children, aged 15 to 17 years, commit crimes in Somaliland. They are sent away from their families, friends, schools and communities, and housed together with convicted adults, some of them hardened criminals. For these children, prison limits contact with family and means no formal education for months, or years, during a critically formative stage of their lives.

The practice of incarcerating children is also routine in other parts of the world where, like Somaliland, time in prison serves to punish children. Little to no thought is given to how to nurture children into productive citizens who can engage with, and contribute to, their society.

Imprisonment does not need to be the answer. Somaliland's Juvenile Justice Law sets progressive standards for judges to follow when they are deciding how to respond to a youngster who has committed a crime. This law requires judges to treat every child as an individual and try to address the reason they ended up in their courtroom in the first place. The law discourages short-term thinking focused on punishment, and encourages long-term thinking on how to promote rehabilitation. It achieves these goals by requiring that prison be treated as a last resort, and even then for the shortest time possible, for any teenager found guilty of a crime. The law mandates that judges consider community-based sentences, termed diversion, in every case of a child.

These laws give judges the power to treat children as children, and not as adults. *Sentencing Children to Significant Prison Time For Minor Offences* details how teenagers do not always receive the protection of these laws and are spending months and years incarcerated. The report also discusses the laws that, if implemented, would help keep teenagers out of prison and at home and at school and in their communities where they have the greatest chance of developing into productive adults.

This report is the third 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*. The series aims to build public interest and confidence in addressing these injustices. The four other topics examined are: why children 14 years and younger are being illegally prosecuted in Series One; how children are unnecessarily imprisoned while their case processes at court in Series Two; how the criminal justice system is being used to address issues better answered by communities, education 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 implement these laws in Series Five. Somaliland's laws protect children. It is up to everyone to help make sure they are upheld.

## SERIES THREE:

### SENTENCING CHILDREN TO SIGNIFICANT PRISON TIME FOR MINOR OFFENCES

*When a child aged 15 to 17 years has committed a crime in Somaliland, judges must consider a range of options when sentencing the child. Prison time is only one possibility and it must be used as a last resort.*



*Bukhari (centre) at home with his family after being released from prison.*

Bukhari Awil Mohamed<sup>1</sup> was 15 years old when he was sentenced to 2 years in prison for stealing a mobile phone. The phone's value was \$50 USD. This was his first time in trouble with the law. Before he was arrested and charged with a crime, Bukhari attended school and helped his family at home. He was tried in Hargeisa, found guilty and sent to serve 2 years at Mandera Prison. Unfortunately, his family could not afford to hire a lawyer to defend him.

<sup>1</sup> Bukhari 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.



Bukhari found himself living in a prison cell with other male children and young adults. He had no regular contact with his father or other family members. He had no access to school or educational material. Bukhari was cut off from the life he knew at the young age of 15 because he stole a phone. Although he was convicted of a crime, he did not have to be sent away from his family and school.

Somaliland's law recognises that while children aged 15 to 17 years can understand right from wrong well enough for courts to hold them accountable for their actions, they cannot be sanctioned for their behaviour in the same manner as adults.<sup>2</sup>

This exception is one way the law embodies society's understanding that teenagers are different from adults. At 15 to 17 years old, teenagers may, in some ways, be as physically mature as adults. But they are still growing and maturing developmentally so they are less blameworthy.<sup>3</sup> They may be able to inflict the same degree of physical harm as an adult, but they do not have the same ability to control their behaviour or appreciate its consequences. As all parents know, teenagers are impulsive and less responsible than adults. They also have a greater capacity for growth and change than adults. The law acknowledges the unique nature of children and puts in place safeguards to protect them, especially when a judge is deciding how to deal with a youngster found guilty of a crime.

According to the 2007 Juvenile Justice Law, there are some sentences a judge is never permitted to impose on a child who is under the age of 18. The death penalty, corporal punishment and life in prison are never allowed.<sup>4</sup> Even if a child plans and commits a murder, they cannot be sentenced to death like adults.<sup>5</sup> Judges are prohibited from completely condemning children, even those who have carried out the most heinous acts, because the law understands their inability to fully restrain themselves and foresee the possible repercussions of their actions.

The provisions of the law do not mean that children aged 15 to 17, who commit offences, will simply be excused and not held responsible for their conduct. The law provides a judge with a number of ways to hold teenagers accountable when they break the law. These different responses are intended to balance the harm a child caused with what is happening in the life of that particular child.<sup>6</sup>

A judge can decide to completely forgive a child for a minor offence if he thinks they have understood what he or she did was wrong.<sup>7</sup> This is called judicial pardon. The situations when this legal protection can be used are limited. The crime the court convicted the youngster of must only carry a maximum potential prison sentence of 3 years. A child can only be granted a judicial pardon once. Crucially, in deciding to grant

<sup>2</sup> Article 10(2), Somaliland Juvenile Justice Law (2007) (hereinafter: "JJL") and Article 60, Somaliland Penal Code (1962) (hereinafter: "Penal Code").

<sup>3</sup> Barry C. Feld, *Adolescent Criminal Responsibility, Proportionality, and Sentencing Policy: Roper, Graham, Miller/Jackson, and the Youth Discount*, 31 Law & Inequality 263 (2013).

<sup>4</sup> Article 12, JJL.

<sup>5</sup> Articles 90 and 434, Penal Code.

<sup>6</sup> Article 8, JJL.

<sup>7</sup> Article 147, Penal Code.

a judicial pardon, the judge must be confident that, all things considered, he or she is very unlikely to commit another offence. This gives judges the ability to give a teenager a second chance when the situation warrants it, and if that is in the best interest of the child, rather than incarcerating them.

A judge can also order children to carry out a good deed in the community which is designed to both hold them answerable and teach them responsibility. This is called diversion. It can include an order to attend school, make a formal apology, make restitution to the victim, or a variety of other measures.<sup>9</sup> The Juvenile Justice Law requires judges to first consider this type of sentence before condemning a youngster to prison. The purpose of a diversion order is to teach the teenager what he or she did was unacceptable and to guide them on how to atone for their actions without sending them to prison. It does the job of not letting children off the hook when they commit a wrong, while giving a judge the ability to deal with them in an age appropriate manner.

However, there may be some situations where a judge thinks it is necessary to send a child aged 15 to 17 years to prison. If a judge, after considering diversion, decides that he must sentence a child to a term of imprisonment, he can do so. But this must be the last option and for the shortest time possible.<sup>10</sup> And any prison time a teenager gets must be less than the sentence that an adult would have been given for the same crime.<sup>11</sup> Common practice is to reduce a child's sentence by one third.<sup>12</sup> So, where a judge would give an adult 3 years for a crime, then a 15 to 17 year-old-youth would get 2 years for the same offence. No matter what the crime is, the longest prison term a judge can give a child is 15 years.<sup>13</sup> This reflects the extent to which the law recognises the differences between a child's and an adult's responsibility for their actions. It helps ensure that youngsters do not serve long prison sentences that negatively impact their development and their ability to reintegrate into society.

Despite these legal protections, Bukhari still received a 2-year sentence for a \$50 dollar phone. A judge had reduced his prison sentence from 3 years to 2 years because of his age. But his father, rightfully, felt the sentence was too long. He appealed his son's case. On appeal, *Horizon* provided Bukhari with legal assistance and a lawyer. The lawyer argued that this was Bukhari's first time in trouble with the law, that he had been in school and helped his family financially, and incarceration was not merited. He also pointed out that his father was willing to repay the value of the phone. The Maroodi-Jeex Appeal Court agreed. In October 2019, they reduced the sentence to time served and the cost of the phone. His father paid \$50 USD for the stolen phone and Bukhari went home.

<sup>8</sup> Article 67, JJJ. In Somaliland, it is only judges who have the authority to divert a child. See Article 67, JJJ.

<sup>9</sup> Article 71, JJJ.

<sup>10</sup> Article 8, JJJ.

<sup>11</sup> Article 10, JJJ and Article 60, Penal Code.

<sup>12</sup> Article 119, Penal Code.

<sup>13</sup> Article 12, JJJ.

# Children Serving Months and Years in Prison

Bukhari is not the only child who has faced a long prison sentence for what was not a very serious offence. Other teenagers throughout Somaliland have, and are, serving months and years imprisoned.

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

Like Bukhari, 43 of these boys were convicted for stealing mobile phones. The theft of phones is a problem many people feel is on the increase, especially in the capitol of Hargeisa. In response, law enforcement has cracked down on people accused of stealing phones, including children. The prosecution will often charge robbery (a crime that carries a potential sentence of 3 to 10 years) instead of theft (a crime with a maximum potential sentence of up to 3 years) because of the higher sentence. Robbery gives the prosecutor a better chance of sending a teenager away for much longer, especially when a family cannot afford a defence lawyer and the child faces the criminal trial alone. This is what happened to Bukhari. Bukhari's father, Awil Mohamed Jama, reflected on their experiences after his son was released from prison.

At that time, I didn't know the difference between robbery and theft. But now I know. Even my son didn't know the impact robbery would have on his life.<sup>14</sup>

Moreover, if the prosecutor does not get the sentence he or she wants initially, like one of these cases shows, they will appeal for a higher sentence. Or, as another case demonstrates, even if the family repays the victim for the harm caused and the person harmed forgives the child, the prosecution may still take the case forward.

Children who are 15 to 17 years of age and found guilty should certainly be made to answer for their behaviour. But prolonged detention, as said earlier, is not the appropriate response and prosecutors and judges can, and should, use their considerable powers of discretion to ensure children are not ending up in prison. In the cases listed below, children are being sent to prison for as long as 4 years, and in one case in Gabiley for 6 years, for stealing a mobile phone. Such measures cannot be justified under any circumstances.

- Mubarik (15) and Ahmed (17) were accused of stealing a mobile phone, arrested and detained at Egal Airport Police Station. They confessed and were convicted of robbery in July 2019. They were sentenced to 3 years in prison and sent to Hargeisa Prison. The boys were released by the April 2020 Presidential Pardon.
- Abubaker (16) was detained at Iftin Police Station in June 2019. He was accused of stealing a mobile phone. A judge convicted him and sentenced him to 2 years in prison in July 2019.

<sup>14</sup> Interviewed in Hargeisa on 23 November 2019.

- Mohamed (16) was arrested for fighting and detained at Iftin Police Station in June 2019. Initially the accusation was simple hurt for fighting. Then the police investigator changed the charge to robbery after Mohamed was also accused of stealing a mobile phone. He was convicted in September 2019 and sentenced to 3 years. The Presidential Pardon released Mohamed in May 2020.
- Abdihakeem (15) was arrested for stealing a mobile phone in August 2019 and held at Daloodo Police Station. He was convicted in November 2019 and sentenced to 1 year. Because he was sentenced to a year, his family paid for the sentence to be turned into a fine and Abdihakeem went home.<sup>15</sup>
- Abdikadir (16) and Subeer (15) were arrested in January 2020 and held at Daloodo Police Station. They were accused of selling a mobile phone. In May 2020, they were convicted. Abdikadir received a fine and the court sentenced Subeer to 6 months. The prosecution appealed on the grounds that their sentences were inadequate. The Maroodi-Jeex Appeal Court upheld the fine and 6-month sentence.
- Liiban (15) was held at Daloodo Police Station in February 2020. He was accused of helping a friend steal a mobile phone. He was convicted and a court sentenced him to 1 year and 6 months in prison.
- Subeer (15), Omer (15), and Abdilahi (15) were arrested and detained at Kood Buur Police Station for stealing a mobile phone in July 2019. They were convicted and sentenced to 1 year in prison in September 2019.
- Hamse (17) was arrested in March 2020 and detained at Kood Buur Police Station. He stole a mobile phone. He was convicted and sentenced to 1 year in prison in April 2020 and was sent to serve his time at Hargeisa Prison.
- Hamse (15), Mohamed (16) and Mukhtar (16) were arrested and detained at Kood Buur Police Station in October 2019. They were accused of stealing a mobile phone. Their families paid the victim for the phone. But the prosecution still decided to take their case to court. A judge convicted and sentenced them to 1 year and 8 months in prison in November 2019.
- Yahye (17) was arrested and detained at Qudhac Dheer Police Station on allegations of stealing a mobile phone in November 2019. He was convicted in March 2020 and sentenced to 2 years and 6 months.
- Hamse (16) was arrested and detained at Mohamed Mooge Police Station in February 2020. He was accused of stealing a mobile phone. A court in Hargeisa convicted him and sentenced him to 8 months in February 2020.
- Mohamed (16), Jimaale (16), and Abdirahman (17) were arrested and detained at Mohamed Mooge Police Station in July 2019. They were accused of stealing a mobile phone. They returned the mobile phone to the victim and she forgave them for the incident. But the prosecution decided to take them to trial. They were convicted and sentenced to 1 year in prison in July 2019.

<sup>15</sup>Article 125 of the Criminal Procedure Code permits prison sentences of 1 year or less to be purchased, meaning the prison sentence is converted into a monetary fine that is paid instead of time spent in prison.

- Mawlid (15) was arrested and detained at Mohamed Mooge Police Station after someone accused him of stealing a mobile phone and a jacket in August 2019. He was sentenced to 4 years. His sentence was reduced to 2 years on appeal in December 2019.
- Muhyadin (16) was detained at Mohamed Mooge Police Station for stealing a mobile phone and jacket with Mawlid above. He was sentenced to 3 years' imprisonment. This was reduced to 1 year on appeal in December 2019.
- Abdifatah (17), Osama (16), and Abdinasir (16) were arrested in February 2020 and detained at Abdi Idan Police Station. They stole a mobile phone. They were convicted in March 2020 and sentenced to 2 years in prison and a fine of 300,000 Somaliland Shilling. The boys were released by the Presidential Pardon in May 2020.
- Abdisamad (15) was arrested in February 2020 and detained at New Hargeisa Police Station. He was accused of stealing a mobile phone. A judge convicted him in May 2020 and sentenced him to 3 years.
- Jimaale (17) was arrested and detained at Hargeisa Central Police Station after being accused of stealing a mobile phone and injuring someone in the process. He was convicted and sentenced to 3 years in prison in January 2020. He was released by the Presidential Pardon in May 2020.
- Yahye (16) was arrested in Hargeisa in December 2018. He was accused of buying a stolen mobile phone. He was convicted and sentenced to 2 years in prison in February 2019. He was sent to Hargeisa Prison.
- Aidrus (16) was arrested in Hargeisa in February 2019. He was accused of stealing a mobile phone. A judge convicted him and sentenced him to 2 years in prison. He was sent to Hargeisa Prison.
- Keyse (17) was arrested in June 2019 and convicted of robbery for stealing a mobile phone. He was sentenced to 2 years at Mandera Prison. In April 2020, he was released by the Presidential Pardon.
- Mohamed (15), Sayid (15), Abdi (15), Hassan (15), Ahmed (15) and Garad (15) were arrested in Hargeisa in February 2019. They were accused of stealing a mobile phone. They were convicted and sentenced to 2 years. They were sent to serve their time at Mandera Prison. The boys were released by the Presidential Pardon in May 2020.
- Jimaale (15) was arrested in Hargeisa in April 2019. He was accused of stealing a mobile phone. He was convicted and sentenced to 1 year in May 2019. He was sent to Mandera Prison. His parents paid to have his sentence converted into a fine and he was released in July 2019.
- Jibril (15) and Sakariye (16) were accused of stealing a mobile phone and arrested in June 2019. A judge in Hargeisa convicted and sentenced them to 2 years. They were sent to Mandera Prison. On appeal, their prison sentence was reduced to time served and they were released in April 2020.



The willingness of law enforcement officials to address mobile phone theft by teenagers with prison time also happens outside of the capital city.

- Abib (15) was arrested in Gabiley in October 2019. He was accused of stealing a mobile phone and using the mobile money on it. A judge convicted and sentenced him to 6 years and a fine of 7 million Somaliland Shillings. He was sent to serve his sentence in Gabiley Prison. The Appeal Court reduced this to 3 months and a fine of 600,000 Somaliland Shillings in January 2020.
- Muse (16) was arrested in October 2019 in Burao. He was accused of stealing a mobile phone. The court convicted him and sentenced him to 3 years and a fine of 2 million Somaliland Shilling in January 2020. He was sent to Burao Prison.
- Abdihakeem (17) and Deq (15) were arrested in Burao after being accused of stealing a mobile phone. They were convicted and sentenced to 3 years in March 2020. They were sent to serve their time at Burao Prison.

Adolescents are also receiving long prison terms for other crimes such as fighting

- Sharmarke (16), Abdinajah (15) and Abdirahman (17) were arrested for fighting and injuring someone in October 2019. They were held before and during trial for 5 months at Hargeisa Central Police Station. They were convicted and sentenced to 2 years in April 2020. Their families made a customary agreement with the victim and paid for the harm done, but the boys were still sent to serve their sentence at Hargeisa Prison.
- Saddam (15), Faisal (17), Abdiaziz (17), Ahmed (16), and Ridwan (17) were arrested in February 2020 and detained at Mohamed Mooge Police Station. They were accused of stealing a laptop from a car. In March 2020, they were convicted and sentenced to 1 year and 6 months in prison. The boys were released by the Presidential Pardon in May 2020.
- Mudasir Adem, (16) was arrested and detained at Kood Buur Police Station after he was accused of taking a car for a joyride. A judge decided he was guilty of taking the car and returning it after he drove it. He was sentenced to 1 year in prison in February 2020. He was released by the Presidential Pardon in May 2020.

This also happens outside of Hargeisa.

- Abdifatah (17) was arrested in Baligubedle after he was accused of setting fire to the grass of a farmer. He claimed it was an accident. He was convicted and sentenced to 3 years in Baligubedle Prison in May 2018. Abdifatah was released by the Presidential Pardon in April 2019.

## What Needs to Change?

Families must have and retain written documentation showing the age of their children. Reliable proof of age, like birth certificates, is not commonly kept in Somaliland, so the age of a child can easily be in question. Series One of *A Collective Failure* discussed the importance of having proof of age to make sure children 14 years or younger are not criminally punished. The same is true for teenagers who are 15 to 17 years old at the time they carried out a crime. Adolescents need to be able to prove their age, if it is contested, to gain the benefit of these legal protections that their young age entitles them to. For example, if a young man is 18 years old when he is convicted but was 17 years old when he committed a crime, he needs to have evidence of this to make sure the judge sentences him as a child. If the young man cannot prove that he turned 18 while the court was processing his case, he will be sentenced as an adult.

Judges should consider and use diversion even though no part of the diversionary system envisioned by the law is yet in place. The diversionary framework that the Juvenile Justice Law sets out includes probation officers.<sup>16</sup> They would be the government officials charged with following up with the child to make sure he or she is doing what the judge ordered. So, for example, if the judge ordered the youngster to attend school or spend time with his or her family, it would be the responsibility of the probation officer to check and find out if he or she was complying, and report back to the judge. This position is not yet in place. But this should not deter judges from ordering diversion. There are options, including written apologies and making restitution to the victim, which are easy for judges to confirm that the child complies.

Prosecutors should also use their discretion to make sure children are not serving long sentences. The law gives prosecutors the power to choose what crime to charge and whether to appeal.<sup>17</sup> Prosecutors must charge based on the facts of a specific case, not on the desired sentence in the hopes of deterring similar crimes. In cases of stolen mobile phones, it may be most appropriate to charge theft. Robbery should only be charged when there is clear evidence that the phone was stolen with force or threat of force. Similarly, prosecutors have a choice whether to appeal. Prosecutors should only appeal if this is in the best interest of the child.

<sup>16</sup>Article 71, JJJL.

<sup>17</sup>Articles 70 and 227, Criminal Procedure Code (1963).

# BECOMING A PART OF THE SOLUTION

## What Can You Do to Help?

We can all take simple initiatives to help make sure children receive the protections of these laws.

- If you are a parent or guardian of a teenager, make sure you have written proof of your children's age on hand. You will then be able to prove their age if they are being tried for a crime. If they are 15, 16 or 17 of age, first ask the judge if a judicial pardon is an option for the offence. If not, then you should next ask the judge to consider diversion. Tell the judge if your child is in school, if they help support your family, and if you will be able to ensure they follow the judge's order. If a judicial pardon or diversion is not an option, ask if a reduced sentence is appropriate. If you can afford a lawyer, they will be in charge of speaking to the judge. But make sure the lawyer knows the age of your child and that he or she should benefit from these legal safeguards. If you cannot afford a lawyer, you can contact a human rights or legal aid organization for free legal assistance.
- 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 that adolescents 15 to 17 years of age should not be sentenced like adults, that they could qualify for diversion, a judicial pardon or a reduced sentence.
- If you are a journalist or work in the media field, write about children in detention. If there is a case of a teenager sentenced to years in prison for a minor offence in your town, follow up with the family and publicise their story. Use the story to show the public that teenagers aged 15 to 17 should not be sentenced like adults and let them know there are strong laws on the books to protect children from serving long terms in prison.
- If you are a judge, you are central to upholding these laws. You are the one making the decision. Use the law to make sure children stay out of prison.
- If you are a prosecutor, you also have a vital job to play to make sure children are not sentence to months and years in prison. Use your discretion to fairly charge teenagers and only appeal cases if it is in the best interest of the child.
- If you are a police officer, how you handle the arrest of children is crucial because it is the first step in what could be a miscarriage of justice. Only make an arrest if there is strong evidence of a crime. And before recording the child's age, make sure to verify this with the child's parents.

- Everyone can help increase the number of children receiving the safeguards of these laws simply by sharing this information with their family, neighbours, friends, colleagues and community. At court, defendants must advocate for themselves. But they can only do this if they know the law. Telling someone about pardons, diversion, and reduced sentencing for adolescents 15 to 17 years old can make all the difference to the future of a child and the wellbeing of their family.

*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.***

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