



Series Five of a Collective Failure

Making Legal Protections a Reality for Children Accused of Crimes

April 2021

Introduction

Somaliland's criminal laws set a progressive standard of legal protections for children accused of crimes. The basis of the 2007 Juvenile Justice Law is the understanding that children, those aged 17 and younger, are not as mature as adults – those aged 18 and older. Because children are still growing physically and developing emotionally and mentally, the law dictates that any response to their wrongdoing must be different by taking this reality into account. Children aged 14 and younger cannot be held criminally responsible at all. For teenagers 15 to 17 years of age, imprisonment must be the last resort and the maximum prison sentence they can receive is 15 years. This is in stark contrast to countries like the United States where children as young as 8 are prosecuted and children aged no more than 13 can be sentenced to life in prison without the prospect of parole.¹ By comparison, Somaliland's laws provide a framework for treating children accused of crimes as children.

Children in Somaliland, however, do not always receive the protection of these laws. Part of the problem is that the Juvenile Justice Law envisions the establishment of infrastructure, including the construction of separate child courts and detentions centres. The expense of building, equipping and staffing these institutions has eluded successive governments. Because building the courts and detention centres is seen as the first step to implementing the law, children and their families have been denied the advantages of the laws which are in place for their benefit.

Children accused of crimes should not be made to wait for expensive infrastructure before they can make use of these laws. Justice actors can implement the letter and spirit of the Juvenile Justice Law, even those that require new buildings, with little to no financial resources.

Making Legal Protections a Reality for Children Accused of Crimes details practical and cost effective steps that can be taken without further delay to make sure the criminal justice system upholds these safeguards. This report speaks directly to those responsible for implementing these laws – police, prosecutors and judges – and is informed by *Horizon Institute's* experience of providing legal assistance to incarcerated children and their families. The 2007 Juvenile Justice Law gives police, prosecutors and judges the legal basis they need to treat children as children. They do not have to wait for infrastructure to be built. They can act now.

¹ The Equal Justice Initiative, <https://eji.org/issues/childrn-in-prison/>

This is the final 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 first four reports documented the injustices children accused of crimes experience: being prosecuted when they are too young in Series One; being imprisoned before they are found guilty in Series Two; getting lengthy sentences for minor wrongdoing in Series Three; and how the criminal justice system is used to address minor offences and anti-social behaviour by children in Series Four. Series One to Four focus on what the public can do to right these wrongs. This last report aims to bring the police, prosecutors, judges and other government actors into this conversation. Somaliland's children deserve a criminal justice system that treats them as children. We all, whether we are working in the government or are members of the public, can contribute to this goal.

Ensuring Children Are Not Held Alongside Adults

Children, those aged 17 and younger, should never be held in the same police or prison cell with adults. The Juvenile Justice Law states that children have the right to be held separately from adults.² Even the 1963 Penal Code prefers that children be held in a completely different facility or in separate sections in shared detention centres with adults.³ The intention is to shield children from interactions with, and the influence of, adults convicted of crimes.

Yet, without dedicated youth detention facilities, infrastructure limitations often prevent police and prison officials from splitting up children from adults. There is no separate prison for children, and only a couple of prisons, Mandera and Burao, have self-contained sections for children. The situation is the same in police stations. Without large enough facilities, or the funds to build more cells, the answer is often to keep children with adults. This does not have to be the response.

Police, prosecutors and judges can keep children out of detention in the first place. The law provides multiple options to make sure children are detained only if there is no other alternative. The relevant legal provisions include the following.

- Children 14 years and younger should never end up in police stations or prisons.⁴ Admittedly, it is hard to prove age in Somaliland where birth certificates and other forms of written proof of age are rare.⁵ There are, nevertheless, steps that can, and should be, taken. As soon as a child is arrested, police officers should verify the child's age with a parent or guardian. Prosecutors and judges should also immediately confirm the age of the child with a parent or a guardian, if it is at issue, once they receive the case. Every precaution should be taken to make sure children 14 years and younger are never detained. If there is doubt about a child's age, the police, prosecutor and judge should use their discretion to decide in favour of the child. This approach would reduce the number of children behind bars.

² Article 9(1)(l), Juvenile Justice Law (2007) (hereinafter: "JJL").

³ Article 136, Penal Code (1963) (hereinafter: "Penal Code").

⁴ Article 10, JJL.

⁵ See Series One of *A Collective Failure* on how children 14 and younger are being prosecuted in English and Somali here <https://www.thehorizoninstitute.org/publications/>.

- Judges can use bail for teens aged 15 to 17. The Juvenile Justice Law permits judges to consider bail for children no matter the crime they are accused of.⁶ This is in contrast to the limits on bail for adults in the Criminal Procedure Code. But these provisions do not apply to children =.⁷ If a parent or guardian can act as a surety, then bail should be granted.⁸ Increasing the use of bail for children would reduce the number of children being held in police stations and prisons before and during trial.
- Judges can sentence children to community-based sentences as a means of keeping them out of prison.⁹ The Juvenile Justice Law sets detention as a last resort and allows for the broad use of diversion.¹⁰ Even the Penal Code offers substitutes such as judicial pardon for children.¹¹
- Lawyers and legal advocates such as paralegals must be allowed to visit children in police stations and prisons. But lawyers and legal advocates are often not allowed to enter police stations and prisons.¹² Access depends on permission granted from authorities in Hargeisa: The Police Commissioner for police stations and the Ministry of Justice for prisons. It is, of course, important for security reasons to monitor and control entrance to places of detention. But it is also necessary to ensure that child detainees receive legal assistance. Lawyers should be allowed access upon proof that they are the child's attorney. Police and prison staff should have authority to grant permission without having to seek approval from headquarters.

Focusing efforts on using the laws to the full extent to keep children out of places of detention will reduce the number of children in detention and the concerns about separating children from adults in police stations and prisons. Even if the government builds child pre-trial detention centres and rehabilitation centres in the future, the priority of police, prosecutors and judges should be to minimize the number of children taken into custody in the first place.

⁶ Article 55, JIL.

⁷ Articles 35 and 59, Criminal Procedure Code (1963) (hereinafter: "CPC").

⁸ See Series Two of *A Collective Failure* on how bail can be used for children no matter the crime charged in English and Somali here <https://www.thehorizoninstitute.org/publications/>.

⁹ See Series Three of *A Collective Failure* on diversion and other alternative sentences permitted under Somaliland law in English and Somali here <https://www.thehorizoninstitute.org/publications/>.

¹⁰ Articles 8 and 67, JIL.

¹¹ Article 147, Penal Code.

¹² Articles 9(1)(d) and 9(1)(o), JIL.

Making the Court Experience More Child Friendly

Children accused of crimes go through a court system designed for adults because there are no child courts in Somaliland. The Juvenile Justice Law sets out a provision for the construction of a separate court system.¹³ The intention of child courts, as with child detention centres, is to keep children apart from adult defendants and respond in a more age appropriate manner. Yet, building child courts throughout Somaliland will be costly.

Making the court experience child friendly does not require new infrastructure, but rather no-cost adjustments in the way we treat children in the criminal justice system.

- Children should not be brought to court in shackles. The law stipulates that defendants, both adults and children, should only be restrained if they are likely to escape or present a danger to others.¹⁴ Restraints under law are the exception and not the rule. The current practice, however, especially in urban areas like Hargeisa, is to bring all detainees, including children, to court in shackles despite the trauma restraints inflict on children. If the police officers genuinely fear the child will flee, they can make the necessary arrangements in how they are transported and guarded.
- Similarly, when children are in the courtroom, they should not be shackled or placed inside the defendant's cage if the courtroom is equipped with one. This should only be done in extraordinary circumstances when a child is a proven danger to others as the law stipulates.¹⁵ Allowing children to sit unrestrained next to their parent, guardian or lawyer would make the court process more age appropriate without involving financial considerations.
- Part of making the court process more child friendly is treating children accused of crimes with kindness. Often when an individual is arrested, including children, they are required to remove their footwear before entering the cell. Allowing all detainees to wear their shoes before they are taken to court preserves their sense of dignity.

¹³ Article 15, JIL.

¹⁴ Article 100, CPC.

¹⁵ Article 100, CPC.

- Judges should opt to hold juvenile cases in a closed court setting in their office. Judges who have to preside over cases in their offices because there are no available courtrooms describe this as a challenge. But it could be an advantage with child defendants. Offices provide a less intimidating environment and it is easy to close the door to control the flow of visitors, thereby also guarding the privacy of vulnerable child defendants.
- If a case involving a child defendant is heard in a courtroom, the presiding judge can still take steps to make the proceedings less daunting. The judge can control who comes into the courtroom and close the doors to make it a closed hearing. The judge can also step down from the bench so he is on the same level as the child, making the interaction with the child less frightening.
- Wearing a robe sets a professional tone for court hearings. But by simply removing his robe in dealings with children, a judge can make the court experience for a child less distressing.
- Central to making the court process child friendly is recognising that children need to understand what is happening to them and explaining the process to them. This is so important that the Juvenile Justice Law mandates it.¹⁶ This is easier said than done when time is limited and when working within a setting where legal terms are commonplace. Yet, a child will not understand what “484” is. Or even if they know “484” means robbery, they will not know that robbery is taking with force and that this carries a potential sentence of 3 to 10 years. Taking time to set out the law, the procedure and what it means for that particular child in non-legal language is another way judges can make proceedings more friendly and age appropriate.
- Even if a judge does all he can to make proceedings more child friendly, the criminal justice system is complex and the consequences can be life-altering so it makes sense that parents or guardians accompany child defendants. It is also guaranteed by the Juvenile Justice Law.¹⁷ Making sure an adult who is responsible for the child defendant attends hearings is not a straightforward matter when case schedules are unpredictable and contact numbers of parents and guardians are not always at hand. Some families also find it difficult financially to come to court repeatedly. Prioritising cases of children so they go forward when scheduled would make it more predictable for family members and less of a financial burden. If family contacts are included on court documents, described below, then a court registrar could contact them in advance to notify parents and guardians of when to come to court for their child’s case.

¹⁶ Articles 61 and 77, JJJL.

¹⁷ Article 9(1)(f), JJJL.

Justice actors can implement the legal protections in the Juvenile Justice Law within the current court infrastructure. This is possible because most of what needs to happen are changes in how children are treated. This is cost free. The most important among these is making sure an adult accompanies the child defendant throughout the process so they have an adult to help them make decisions.

This is a photo of Saddam and his father, Ahmed. Saddam was arrested by the police in Burao, Togdheer region, together with a group of other boys after they got into a fight. Ahmed found out about Saddam's arrest through the families of the other boys involved in the fight.



Facilitating Contact with Parents and Guardians

Under the Juvenile Justice Law, children have a right to have their parents or guardians notified of their arrest, to have a parent or guardian present at all stages of proceedings and to receive regular visits from them.¹⁸ They also have a right to remain silent and not be questioned by law enforcement unless a parent, or legal representative, is present.¹⁹ Helping them to stay in contact with their parents or guardians is central to upholding these rights.

There are, however, a number of practical hurdles. Providing children with a phone to contact their parents or guardians is an additional expense. Young children, in particular, may or may not know their parent's or guardian's number. Or, there could be any number of other obstacles, such as the owner not having electricity on a regular basis.

There are ways to mitigate these potential barriers.

- Police officers should make good faith efforts to ensure that an adult family member is aware the child is going to be arrested, and which police station they are being taken to. The police can collect and record a contact number from this parent or guardian at this time.
- If a child is caught in the act of committing an offence, and a police officer needs to make an arrest on the spot, they should immediately contact a parent or guardian afterwards. If the child does not know a number, an officer should be sent to the child's house to notify the family of the child's arrest. This is also an opportunity for the police to record a contact number.
- The family contact the police record should be included on all court documents in case a child is transferred to another police station or prison. Having the contact number on the committal warrant would help a prison officer communicate with the child's family.

Children should not face the prospect of criminal conviction and imprisonment without a parent or guardian present, making it critical for police and court officials to maintain a connection between children and their parents and guardians.

¹⁸ Articles 9(1)(f) and 9(1)(o), J JL.

¹⁹ Article 9(1)(e), J JL.

Long Term Solutions to Improving Juvenile Justice

The overarching goal of *Making Legal Protections A Reality for Children Accused of Crimes* is to suggest the immediate, practical and feasible steps justice sectors can take to respect the rights of children who are seen to have broken the law. Minimizing the number of children in detention, treating children as children in court and always allowing them to stay in contact with parents and guardians are neither difficult nor expensive. And the benefits are immeasurable. The number of children locked up with adults will be reduced, the advantages of a separate child court system within the current infrastructure can be realised and children will not go through the criminal justice system without the support of a parent or guardian.

These shifts in approach, critical as they are, cannot be a substitute for long-term investment in the justice system. The child detention centres and courts envisioned by the Juvenile Justice Law should be built in the future. Even then, the guiding principle should remain that children will only be arrested, prosecuted and imprisoned ***if there is no other option***. Having more space should not become a reason to try, convict and imprison more children. Justice facilities that cater to children should not simply act in parallel to the adult system, using the same approach.

Even though the 2007 Juvenile Justice Law sets a progressive standard, there are reforms that would make the law clearer. Chief among these is clarifying the age of child as being “under 18 years of age” in the definitions section. Currently, the states that children are persons younger than 15 years but in other sections of the law children are persons younger than 18.²⁰ This causes confusion and misapplication of law that can leave children 15 to 17 years old in a legal limbo. There are a host of other amendments the law would benefit from detailed in a recommendation paper published in 2015 by *Horizon Institute*.²¹ Whatever amendments are made in the future, the spirit of the law that children must only be detained and imprisoned when there are no alternatives must be maintained.

²⁰ Article 1, JJJ.

²¹ *Horizon Institute's Recommendations for Amendments to Somaliland's Juvenile Justice Law* (2015), available at <https://www.thehorizoninstitute.org/resources/>.

Towards a Future of Child Protection

The 2007 Juvenile Justice Law provides police, prosecutors and judges with the framework they need to make legal protections for children accused of crimes a reality now. This is a law that justice actors should be proud to implement. In a legal environment where laws are often outdated or do not respond appropriately to current issues, this law, despite certain weaknesses in the drafting, attempts to take the best parts of statutory law, Sharia law and customary law to provide a structure that safeguards and focuses on rehabilitating children accused of crimes. By making imprisonment the absolute last resort, the law enables children to stay at home and in school where they have the best chance of growing into productive and responsible citizens that can contribute to the future of Somaliland.

We would welcome suggestions from readers about how the subject matter of this report can be more widely disseminated to different audiences.

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