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Juvenile Justice in Somaliland
A Consideration of the Roles of Relevant Government Institutions

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I. Introduction

In 2008, Somaliland passed a new Juvenile Justice Law (“JJL”). Several of the institutions envisaged in the JJL have yet to be established. The existing institutions working in juvenile justice face challenges that need to be addressed before the JJL can become a reality. In particular, there is a lack of coordination between the different institutions working with children in conflict with the law. Overlapping mandates, as well as a lack of clarity about each institution’s role and responsibilities, make it difficult to implement the JJL and put in place an effective juvenile justice system that protects the rights of children.

In most jurisdictions, the ministries of justice and/or the interior, the judiciary, and the prosecution are the main actors in the field of criminal justice. However, the role of social services is fundamental to ensuring that the criminal justice system meets the needs of children. Accordingly, the government ministry or department charged with social welfare or social services often has a lead role to play in juvenile justice.

To assist in clarifying the responsibilities of Somaliland’s institutions working in juvenile justice, this paper analyses the roles of various government institutions in Somaliland and compares the different approaches to children in conflict with the law taken by other countries in the region. This paper aims to encourage better planning and coordination between the Somaliland institutions working in juvenile justice to ensure a comprehensive, efficient and fair criminal justice system for children.

II. Somaliland’s Juvenile Justice Framework

The JJL sets out a legal framework for juvenile justice in Somaliland and identifies the roles of specific government institutions. While several of the structures and bodies envisaged in the legislation have yet to be established, the JJL does specify the role of existing ministries. In particular, the Ministry of Justice (“MoJ”) has a prominent role in juvenile justice, which stems from its mandate over several areas through the following departments:

- a. Judicial and Access to Justice Department, which includes a Legal Aid Unit;
- b. Prison Affairs and Human Rights Department;
- c. Women and Children’s Justice Department, which is broken down into Juvenile, Child Protection, and Gender Units.

Under the JJL, the MoJ is vested with the additional responsibility of:

- a. Establishing an Office of Social Probation;¹
- b. Establishing Pre-Trial Detention Centres;²
- c. Establishing Children Rehabilitation Centres;³
- d. Organising and managing structures of the Rehabilitation Centres;⁴ and

¹ Juvenile Justice Law, Art. 21, (hereinafter: “JJL”).

² *Id.* at Art. 27.

³ *Id.* at Art. 30.

⁴ *Id.* at Art. 40.

- e. Establishing a Child Welfare and Protection Committee.⁵

In order to undertake its work in these areas, the MoJ is required to collaborate closely with other ministries. In particular:

- a. Social Probation Officers are to be nominated in consultation with the Ministry of Labour and Social Affairs (“MOLSA”).⁶
- b. The MoJ is expected to work with the police commissioner who will be responsible for nominating members of the children’s police.⁷
- c. The MoJ must consult with the MOLSA to establish pre-trial detention centres, Children Rehabilitation Centres, and Child Welfare and Protection Committees.⁸

Moreover, while the prosecution of juvenile cases is primarily the responsibility of the Attorney General, other entities are to be involved. The JJJ calls for the arrest of any child to be reported immediately to both the Attorney General and the competent Children’s Court.⁹ Specialist Children’s Courts – yet to be set up pursuant to Article 15 – shall form part of the judiciary, to be governed not only by the JJJ, but also the existing Law on the Organisation of the Judiciary.¹⁰

Implementation of the JJJ requires a multi-institutional approach. Accordingly, institutions and departments dealing with social welfare, justice and policing must collaborate to promote the welfare and policing of children in conflict with the law. This paper compares examples of how other countries in the region take a multi-institutional approach to juvenile justice.

III. Comparative Approaches to Juvenile Justice

To assist in the implementation of the JJJ, and in clarifying the roles and mandates of Somaliland’s institutions working in juvenile justice, this section analyses how various government institutions and services within the region approach juvenile justice.

1. Juvenile Crime Prevention

Before a child is arrested and charged with an offence by the police, many jurisdictions take steps to prevent juvenile delinquency and to assist at risk children, which is essential to crime prevention. In Tanzania, Local Government Authorities (“LGAs”) are vested with the duty to safeguard and promote the welfare of children within their jurisdiction. The LGAs are tasked with keeping a register of the most vulnerable children and assisting them whenever possible.

Institutions that are charged with social welfare are often responsible for children who are at risk of committing crime. For example, Social Welfare Officers located within the LGAs in Tanzania are mandated with implementing programmes on both juvenile crime prevention, and rehabilitation and reintegration for child offenders. Similarly, in South Africa, probation officers located in the Department of Social Development work directly with families and communities to prevent juvenile offending. These community-based services and

⁵ *Id.* at Art. 45.

⁶ *Id.* at Art. 21.3.

⁷ *Id.* at Art. 23.2.

⁸ *Id.* at Arts. 27.1, 30, and 45.1.

⁹ *Id.* at Art. 52.

¹⁰ *Id.* at Art. 15.1.3.

programmes are instrumental in preventing juvenile delinquency, and can provide rehabilitative services for at risk children where other state institutions or agencies lack capacity or do not exist.¹¹

Other ministries can also play an important role in preventing juvenile delinquency. In Egypt, the Ministry of Interior includes a General Administration for Juvenile Welfare Investigations, which is responsible for investigating children at risk of delinquency. This department also carries out arrests through its specialised juvenile police.

In Somaliland, MOLSA is responsible for at risk children and has a role to play in preventing juvenile delinquency. MOLSA has established rehabilitation centres for street children, aimed at preventing street children from offending. Reportedly, MOLSA requested the Custodial Corps to guard the centres. Were this to have happened, it would have been inconsistent with MOLSA's mandate to protect and promote child welfare.

The practice of detaining children is not confined to Somaliland, but can be found in other countries in the region, such as Rwanda, Uganda and Kenya. The detention of children, however, should only be a last resort. Rather than arbitrarily detaining street children, MOLSA's centres should instead have the sole aim of rehabilitation, where children are free to come and go, rather than detained. Like in Tanzania and South Africa, MOLSA should aim to develop community-based services that provide rehabilitative services that prevent juvenile delinquency and assist at risk children.

2. Post-Arrest

The JJL and international standards encourage diverting children from the formal justice system and judicial proceedings. The police, prosecution, and other agencies dealing with juveniles should, therefore, try to dispose of cases without recourse to a formal hearing and, where possible, without detaining children. Under Article 67 of the JJL, a children's judge has the authority to issue a diversion order. However, several other agencies and institutions also play an important role in the diversion process.

2.1. Detention Facilities and Police

A range of actors, including ministries dealing with social services, prisons, and the police, may have responsibility for juveniles at the post-arrest, pre-trial stage.

In several jurisdictions, social welfare institutions provide non-punitive, pre-trial housing for children in conflict with the law. In Kenya, the Children's Department of the Ministry of Labour, Social Security and Services administers juvenile remand homes, where children awaiting trial are held. Unfortunately, many juveniles are also held at remand prisons in Kenya, which come under the jurisdiction of the Prison's Department of the Ministry of Interior. Tanzania has retention homes for pre-trial detention, which the Department of Social Welfare manages, and the Commissioner for Social Welfare monitors and supervises. Similarly, Egypt has short-term and long-term residential facilities, and "observation homes" where children are held pending trial, which the Ministry of Insurance and Social Welfare administers. In Ghana, the Department of Social Welfare manages remand homes for juveniles. In Uganda, the Ministry of Gender, Labour and Social Development manages the remand homes where children awaiting trial are held.

¹¹ The United Nations Guidelines on the Prevention of Juvenile Delinquency, adopted on 14 December 1990, A/RES/45/112 (hereinafter: "Riyadh Guidelines").

Because the pre-trial detention of children should only be a last resort in criminal proceedings,¹² diversion is necessary to protect children's rights at the post-arrest, pre-trial stage. The United Nations Standard Minimum Rules for Non-Custodial Measures recommend that criminal justice systems empower the police to divert juvenile cases. Uganda has adopted this approach. Under Uganda's Children Act, the police have the discretion to dispose of children's cases without recourse to formal court proceedings. For example, they may issue a warning and release a child who has been arrested, or release a child and refer them to the Secretary of Children Affairs or to the probation and social welfare officer. Where possible, all cases involving children in conflict with the law in Uganda are handled by the Child and Family Protection Unit of the police.

In Somaliland, the JIL mandates the establishment of Children Pre-Trial Detention Centres, like in Kenya and the other above mentioned examples, and the use of diversion where appropriate in juvenile cases. It is recommended that the MoJ could collaborate with the MOLSA when establishing Children Pre-Trial Detention Centres to ensure better planning and implementation, and to guarantee the broadest protection of children's rights. It is also recommended that Somaliland empower the police to divert juvenile cases when appropriate to ensure that juvenile cases, like in Uganda, are being diverted where appropriate at the earliest stage in the proceedings.

2.2. Assessment and Probation Services

In jurisdictions that divert juvenile cases, the arrested child offender is assessed before their first court appearance to determine whether or not the child's case qualifies for diversion. Often, social services and probation officers conduct this assessment, but in some instances this responsibility falls within the jurisdiction of the relevant justice institution.

In South Africa, probation officers staff one-stop child justice centres that are usually based at magistrates' courts. Children arrested by the police are transferred, preferably during the first 24 hours after their arrest, to a probation officer for assessment prior to their first court appearance. The Department of Social Development originally coordinated the centres, but now the Department of Justice and Constitutional Development administer the one-stop child justice centres. The objective of these centres is to streamline the juvenile justice process from arrest to court proceedings.

In Zimbabwe, the police and the courts can request that probation officers, who are located in the Department of Social Welfare in the Ministry of Labour and Social Welfare, conduct assessments of juvenile offenders. The police must make such a request in all cases involving juveniles below the age of 14 years. The Attorney General uses these assessments to decide whether or not to prosecute a juvenile offender. If a juvenile case is referred to the Attorney General without a probation officer's assessment of the child offender, the Attorney General's office will return the case to the police until a probation officer can assess the child. Zimbabwe's courts can also request that probation officers provide an assessment report on the risk of reoffending and rehabilitation before sentencing a juvenile.

In Egypt, the Ministry of Insurance and Social Welfare appoints a variety of social welfare experts to different institutions working on juvenile justice, including the Juvenile Court. These social welfare experts assess the child offender prior to their appearance before the Public Prosecution Office and the court. Egypt's social welfare officers also serve as

¹² The United Nations Standard Minimum Rules for Non-Custodial Measures, GA/RES/45/110, Rules 5.1, 6.1 (hereinafter: "Tokyo Rule").

probation officers and provide court supervision to ensure that convicted children carry out the imposed sentence.

In Somaliland, much like in Zimbabwe, the JJJ requires that the police officer in charge of the relevant police station request that a probation officer assess the child offender.¹³ This assessment is to be submitted to court during the child's preliminary hearing.¹⁴

2.3. Role of Prosecutors

In some jurisdictions, the prosecutor has significant discretion to decide whether to prosecute a child or to advise diversion. For example, in South Africa, the National Prosecuting Authority has issued a directive under the Child Justice Act that gives prosecutors discretion to divert juvenile cases.

Countries from outside the region also give prosecutors significant discretion to divert juvenile cases. In Germany, prosecutors may dismiss juvenile cases if they consider that other agencies, such as those responsible for social services, have already acted adequately with respect to the child. In Belgium, prosecutors have the discretion to decide that the offence is a symptom of an underlying social or family problem, and involve social services rather than prosecute. As a result, the Belgian Attorney General has the discretion to determine whether to prosecute or divert a juvenile case.

In Somaliland, the proposal of the Attorney General is taken into account concerning whether to prosecute or divert a juvenile case,¹⁵ but the ultimate decision is left to the judiciary under the JJJ.¹⁶ It is recommended that Somaliland consider giving prosecutors more discretion to divert cases, as in Germany and Belgium, in order to allow prosecutors to divert cases earlier in the proceedings and to lessen the caseload of the judiciary.

2.4. Role of Courts

A child, who has been arrested and whose case has not immediately been diverted from the formal justice system by the police, should appear before a judge as soon as possible in the post-arrest, pre-trial stage to ensure that the arrest and detention is lawful. In Egypt, the judiciary is required by law to monitor police lockups, reformatories, and welfare institutions for children. The judiciary, therefore, can have an important supervisory function that requires working with the police, prison, and social welfare/services departments.

Some jurisdictions also require a judge to determine whether or not a juvenile case qualifies for diversion. For example, Uganda and Ghana have established informal courts and child panels to divert juvenile cases. In Uganda, Local Council Courts operate at the village level and serve as first instance courts for child offenders charged with theft, criminal damage, assault and affray. These courts do not have the authority to place a child in detention, and can only use forms of diversion, such as a community guidance order.

In Somaliland, the judiciary is instrumental in the post-arrest, pre-trial stage in protecting the child's rights, and in ensuring that a child's arrest and detention is lawful. Article 50 of the JJJ gives children held in pre-trial detention the right to be heard and mandates, under Article

¹³ JJJ, Art. 56.

¹⁴ *Id.* at Art. 57.

¹⁵ *Id.* at Art. 72.

¹⁶ *Id.* at Art. 67.

14, that the judge assist in this process. Judges are also required under the JJJ to explain to the child his or her rights under the law and inform the child of the nature of the allegations against him or her during the preliminary hearing.¹⁷ However, unlike the judicial system in Egypt, the JJJ does not explicitly require the Somaliland judiciary to monitor detention centres holding juveniles. The structure of preliminary hearings under the JJJ affords the judiciary the opportunity to effectively perform a supervisory function with regard to the police and prisons if Somaliland wanted to implement a system similar to Egypt's in order to provide oversight of these institutions.¹⁸

The judiciary in Somaliland is also crucial in facilitating diversion in juvenile cases. Article 67 of the JJJ mandates that a judge determine whether diversion is an appropriate action and issue an order accordingly. Thus, like in Uganda and Ghana, the JJJ requires judges to make the final determination on whether or not to divert a child's case.

3. Trial and Post-Trial

Regardless of whether a child receives a community-based or custodial sentence, a range of ministries must be involved to advise on sentencing and to ensure that detention facilities are managed in a way that respects children's rights. To assist the court in determining whether a custodial or community-based sentence is appropriate, many jurisdictions require reports from the police and probation services to determine the appropriate sentence. In Uganda, for example, following an arrest of a child, police officers prepare a pre-sentence report that recommends whether or not a community-based sentence is appropriate. In Somaliland, the JJJ permits the Children Court to impose both community-based and custodial sentences.¹⁹ To determine what sentence to apply, the JJJ allows the Child Court during the sentencing phase to request the assistance of experts, which may include the police and probation officers.²⁰ Accordingly, the police, judiciary, and probation services in Somaliland will be required to work together in order to determine the most appropriate sentence for a child.

In terms of post-conviction detention, different approaches are used throughout the region. In Tanzania, children may be sentenced to serve time in an "approved school," which falls under the management of the Department of Social Welfare, whose Commissioner is responsible for the monitoring and supervision of the schools. In Ghana, the Department for Social Welfare operates junior correctional facilities. In South Africa, children may be sentenced to reform schools or residential facilities managed by the Department of Education. Juveniles may also be committed to reform schools in Kenya, which come under the administration of the Children's Department in the Ministry of Labour, Social Security and Services. There are also three borstal institutions for children in Kenya, which come within the remit of the Prison's Department. In Somaliland, the JJJ mandates that convicted children be held in Children Rehabilitation Centres and that the MoJ foster an "inter-ministerial and inter-departmental" approach to managing these facilities.²¹ As such, it is recommended that the MoJ could seek to collaborate with MOLSA to manage the Children Rehabilitation Centres because MOLSA is mandated to establish similar rehabilitation centres for children.

¹⁷ *Id.* at Art. 61.

¹⁸ *Id.* at Arts. 58-61.

¹⁹ *Id.* at Arts. 84-85.

²⁰ *Id.* at Art. 83.

²¹ *Id.* at Art. 30.

IV. Inter-Ministerial and Departmental Cooperation

The above demonstrates that juvenile justice often requires collaboration between ministries. United Nations' guidelines also emphasise the importance of inter-ministerial and inter-departmental cooperation in enhancing the administration of juvenile justice and improving the quality of institutional treatment of children in conflict with the law.²² In particular:

Rule 26.6 of the Beijing Rules: "Inter-ministerial and inter-departmental cooperation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalised juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage."

Rule 22.1 of the Tokyo Rules: "Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and nongovernmental, in such fields as health, housing, education and labour, and the mass media."

Rule 60 of the Riyadh Guidelines: "Efforts should be made and appropriate mechanisms established to promote, on both a multi-disciplinary and an intra-disciplinary basis, interaction and co-ordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions."

Rule 62 of the Riyadh Guidelines: "Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened."

One way that Somaliland's JJJL seeks to implement a collaborative approach to juvenile justice is through the Children Rehabilitation Centres. The JJJL requires that representatives from a range of ministries comprise the Board of Directors ("the Board") for the Children Rehabilitation Centres, including the following: Justice; Education; Health; Family Affairs and Social Development (now MOLSA); Youth and Sports; Religious Affairs and Endowments; and Interior.²³ The JJJL also mandates that the Board is to include representatives from both the National Human Rights Commission and the business community.²⁴ This inter-ministerial and inter-agency Board will prepare reports on the needs of the children, visit rehabilitation centres, and submit reports to relevant authorities. The individual directors will also be responsible for communicating the work of the Children's Rehabilitation Centres to their relevant institutions. The aim of the Board is to work collaboratively to rehabilitate children in conflict with the law.

However, as seen through the above regional and international examples, an inter-ministerial, inter-departmental, and even inter-agency approach is essential at all stages of juvenile justice, from preventing juvenile delinquency to reintegrating convicted juveniles back into their communities. Therefore, government ministries and institutions should collaborate wherever possible to ensure a cohesive juvenile justice system that protects children's right.

²² The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, adopted on 29 November 1985, A/RES/40/33 (hereinafter: "Beijing Rules").

²³ JJJL, Art. 36.

²⁴ *Id.*

Collaboration and coordination can be achieved in a number of ways. For example, Namibia's Juvenile Justice Forum regularly brings together representatives of several ministries (including, Youth and Sports, Justice, Education, Health and Social Services), the Department of Prisons, the Namibian Police, the judiciary, local NGOs and UNICEF, to discuss policy issues and raise questions about specific situations and problems. Representatives also discuss the draft texts of proposed legislation and policy documents. With decision-makers and other stakeholders present, the forum enables obstacles to be identified, possible solutions to be suggested and responsibilities to be assigned. This approach results in a more cohesive response to juvenile justice issues.

A further illustration of a collaborative approach is the Save the Children diversion project in Uganda, which involved establishing a district-level committee comprised of representatives from the key criminal justice agencies, including the police, judiciary, prison service and social welfare departments. The committee then invited interested members of civil society groups and representatives of international agencies present in the district to join the committee and participate in its work. The committee introduced specific measures for training and awareness-raising to ensure proper treatment of children by police, appropriate sentencing by magistrates, and the separation of children in custody from adults. It provided education to the community to highlight the new approach, with the aim of ensuring that the community as much as possible deals with children at risk; that support is provided for resolving conflicts locally; and to show that children can be rehabilitated using community resources. The inter-agency committee also introduced diversion mechanisms involving the use of civil society resources, and promoted cooperation between the personnel of the different criminal justice agencies.

Another example is South Africa's Inter-Ministerial Committee on Young People at Risk ("IMC"). The IMC established the Inter-Sectoral Committee for Child Justice, which developed the one-stop child justice centres mentioned above. One of the objectives of the one-stop centres is to promote cooperation among government departments, as well as between government departments and the non-governmental sector to ensure an integrated and holistic approach. Moreover, South Africa's Child Justice Act provides that the Ministries of Justice, Social Development, Safety and Security and Correctional Services are jointly responsible for the provision of resources and services at the one-stop centres.

These examples illustrate crucial ways in which an inter-ministerial, inter-departmental, and inter-agency approach can be achieved in Somaliland beyond the Board of the Children Rehabilitation Centres. The value of such a policy cannot be underestimated because creating an effective juvenile justice system depends on the police, probation services, prosecution and judiciary working together.

V. Conclusion

In assessing the approach of various international and regional jurisdictions, it is clear that the responsibility for juvenile justice does not fall to any one particular government institution. Rather, it requires a range of government and non-governmental actors to work together and to fulfil different roles at various stages of the juvenile justice process.

In most jurisdictions, departments dealing with social services and welfare have a significant role to play when a child first comes into conflict with the law. Community-based or local government initiatives often assist in juvenile crime prevention, as well as in diverting

children from the formal justice system before they are arrested. Often, the department responsible for social affairs handles juvenile crime prevention, but there is also an essential and active role for the police to play, especially concerning diversion.

When a child comes into contact with the police in Somaliland, the responding police officer could be tasked with determining whether it is in the best interests of the child and the community to divert the child's case. The prosecution, under the authority of the Attorney General, could also have a role to play in determining whether to proceed with a prosecution, or recommend that it is in the best interests of the child for his or her case to be diverted to social services or community-based mechanisms.

Even where a juvenile case reaches trial in Somaliland, formal justice institutions should work closely with social service institutions to assess the child and to determine whether a community-based or custodial sentence is appropriate.

Most importantly, it is recommended that government ministries and institutions in Somaliland work together to encourage an inter-ministerial, inter-departmental, and inter-agency approach to juvenile justice. Otherwise, the welfare of the child cannot be fully guaranteed. An understanding of each institution's responsibilities, and cooperation and coordination between ministries, is crucial. This could be achieved through the establishment of a juvenile justice forum or committee tasked with addressing issues affecting children in conflict with the law, with a view to reaching consensus on the roles of various institutions. Once a consensus has been reached on ways and mechanisms to facilitate cooperation and coordination throughout the juvenile justice system, all parties could agree to a memorandum of understanding ("MOU") outlining each institutions role in the juvenile justice system. Thereafter, continued cooperation and coordination, in line with the MOU, could move Somaliland towards an effective, efficient, and comprehensive juvenile justice system that protects children's rights.