

Inhuman sentencing of children in Somalia

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Inhuman sentencing of child offenders in Somalia

1. There is no legal prohibition of the death penalty, life imprisonment or corporal punishment as judicial sentences in relation to offences committed by children. Furthermore, there is no effective minimum age of criminal responsibility in Somalia.¹
2. Islamic law has been applicable in Somalia, alongside secular law, since 2009.² Pursuant to Somalia's 2012 Constitution, "no law can be enacted that is not compliant with the general principles and objectives of Shari'ah".³ Under Islamic law persons typically become criminally liable once they reach puberty.
3. Under the Somali Penal Code, which is applicable in South/Central Somalia and Puntland, the minimum age of criminal responsibility is 14, however children under that age may be sent to reformatories.⁴
4. In Somaliland, which is recognised as an autonomous region of the country, the Juvenile Justice Act 2007⁵ harmonises the provisions of secular, Shari'ah and customary laws. It sets the minimum age of criminal responsibility at 15.⁶ However, it was reported in 2011 that this legislation was never implemented.⁷ CRIN has not able to verify whether this information remains up to date.

Legality of inhuman sentencing

Death penalty

5. Under secular law children may not be sentenced to capital punishment.⁸

¹ Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Farnham: Ashgate Publishing Limited

² See BBC news, *Somali leader agrees Sharia law*, 28 February 2009, available at: <http://news.bbc.co.uk/1/hi/world/africa/7916937.stm>.

³ Provisional Constitution of Somalia, 2012, Article 2, available at: <http://unpos.unmissions.org/LinkClick.aspx?fileticket=RkJTOSpoMME=>. The Constitutions of Puntland, available at: <http://www.refworld.org/pdfid/4bc589e92.pdf>, and of Somaliland, available at: http://www.somalilandlaw.com/Somaliland_Constitution/body_somaliland_constitution.htm, are also based on Shari'ah law.

⁴ Penal Code, Articles 50, 60 and 177, available at: available at: http://www.somalilandlaw.com/Penal_Code_English.pdf.

⁵ Juvenile Justice Act 2007 available at: http://www.aclr.info/images/stories/uploader/Publication_files/Bills/Somaliland_Juvenile_Justice_Bill_2007.pdf. See http://www.unicef.org/somalia/reallives_5434.html.

⁶ Juvenile Justice Act, Article 10.

⁷ IRIN humanitarian news and analysis, *SOMALIA: Failing law leaves children unprotected in Somaliland*, 24 October 2011, available at: <http://www.irinnews.org/report/94054/somalia-failing-law-leaves-children-unprotected-in-somaliland>

⁸ Penal Code, Articles 60 and 119 and Somaliland Juvenile Justice Act 2007, Article 12.

6. Under Islamic law, however, *hadd* offences (for which the punishment is mandatory) are punishable with death and include apostasy, murder, adultery and armed robbery. Persons typically become liable for such crimes from the age of puberty. It has been reported that crimes such as murder are typically dealt with under Shari'ah law in Somalia.⁹

7. Furthermore, according to customary law (*Xeer*) the victim's family has the right to kill a family member of the alleged perpetrator.¹⁰ However, CRIN has no information regarding the application of such law to children.

Life imprisonment

8. Life imprisonment is not a sentence used under Islamic law or customary law. Life imprisonment is not a lawful sentence for children in Somaliland under the Juvenile Justice Act 2007,¹¹ however as mentioned above reports indicate that this law remains unimplemented.

9. However, sentences of life imprisonment for offences committed by children over 14 are lawful in South/Central Somalia and Puntland under the Penal Code if the offence would carry the death penalty when committed by an adult.¹² If the offence carries a sentence of life imprisonment for adults, children are to be sentenced to 20 to 24 years' imprisonment.¹³ Children under 14 may not be sentenced to life imprisonment, but are instead to be sent to a reformatory for no less than three years.¹⁴

10. The Juvenile Courts and Reformatories Law 1970 states that no child under 14 should be sentenced to imprisonment and no young person aged 14 to 17 shall be sentenced to imprisonment unless the court considers that no other measure is suitable.¹⁵ This restriction would not apply for the offence of murder, over which the juvenile court has no jurisdiction.¹⁶ Therefore, even if the 1970 Law were fully implemented across Somalia, life imprisonment remains a legal sentence for children convicted of murder under the general provisions of the Penal Code.

Corporal punishment

11. Corporal punishment appears to be illegal under secular law, but is a valid sentence under Islamic law.

12. The Somali Penal Code makes no provision for judicial corporal punishment. The Constitution of Somaliland explicitly prohibits corporal punishment.¹⁷ Under the Juvenile Justice Act 2007, corporal punishment is not a lawful sentence for children in Somaliland,¹⁸ however as mentioned above this law presumably remains unimplemented.

⁹ A/HRC/13/65, 23 March 2010, Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari, para. 66, available at: <http://www.refworld.org/docid/4bc2d2382.html>.

¹⁰ A/HRC/12/44, 17 September 2009, Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari, para. 66, available at: <http://www.refworld.org/docid/4acb4abc2.html>.

¹¹ Juvenile Justice Act 2007, Article 12.

¹² Penal Code, Articles 60 and 119.

¹³ Ibid.

¹⁴ Penal Code, Article 177.

¹⁵ Juvenile Courts and Reformatories Law 1970, Articles 9 and 5(1), available at: http://www.somalilandlaw.com/Juvenile_Courts_and_Reformatories_1970.pdf.

¹⁶ Juvenile Courts and Reformatories Law 1970, Article 3.

¹⁷ Constitution of Somaliland, Article 24(2), available at: http://www.somalilandlaw.com/Somaliland_Constitution_Text_only_Eng_IJLL.pdf.

¹⁸ Juvenile Justice Act 2007, Article 12.

13. However, it is possible that children are sentenced to corporal punishment under Islamic law. Typically, Islamic law prescribes corporal punishment for *hadd* offences and for *ta'zir* offences (for which the punishment is discretionary), including for children. Punishment for *hadd* offences includes flogging, amputation and – as retaliation – injury similar to that for which the offender has been convicted of inflicting on the victim. *Ta'zir* punishments are typically based on *hadd* punishments for similar offences, but as indicated tend to involve greater judicial discretion.

Inhuman sentencing in practice

14. No exact numbers of children being sentenced to the death penalty, life imprisonment or corporal punishment are available. Executions continue to be carried out in Somalia, many of them extrajudicial.¹⁹ The age of the victim is rarely given, but one widely reported incident concerned the alleged stoning to death in 2008 of a 13-year old girl in Kismayo after being convicted of adultery by a Shari'ah court.²⁰

The review of Somalia by members of the Human Rights Council

15. In light of the clear international human rights consensus against the imposition of the death penalty, life imprisonment and corporal punishment of child offenders, we hope that the members of the Human Rights Council will urge the Federal Government of Somalia to:

- enact and enforce legislation explicitly prohibiting the death penalty, life imprisonment and corporal punishment of children, including under Shari'ah and customary law, in respect of offences committed by persons under the age of 18;
- immediately review the sentence of any person serving a life sentence for an offence committed while under 18 to ensure that no one serves a life sentence for an offence committed while a child;
- establish a minimum age of criminal responsibility in line with international standards;
- create a juvenile justice system in line with international standards.

¹⁹ See Amnesty international Report 2014/2015, *Somalia*, available at: <https://www.amnesty.org/en/countries/africa/somalia/report-somalia/>; Death Penalty Worldwide database, *Somalia*, available at: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Somalia> and the Hands Off Cain database, available at: <http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=25&nome=somalia>.

²⁰ A/HRC/10/85, 24 february 2009, Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari, paras. 17 and 50, available at: <http://www.refworld.org/docid/49c78a822.html>.