



Juvenile Violence and Delinquency in Somaliland

Why Incarceration is the Wrong Response

June 2018

Horizon Institute is an NGO registered in Somaliland that puts human rights into action through institutional and grassroots interventions that are informed by research and critical analysis of the issues most pressing to the communities our work impacts. At the centre of all aspects of Horizon's work is a strong commitment to the advancement of human rights and the rule of law. We are also dedicated to ensuring that local knowledge and opinions take precedent in the design and implementation of the international development assistance programs we manage. Horizon believes that prioritising a commitment to human rights and leveraging community expertise strengthens the functioning, capacity and service delivery of governments and institutions in the private and not-for-profit sectors, and moves countries from fragility to stability.

Horizon's reports and discussion papers explore issues identified through our work. They are intended to stimulate debate among stakeholders, the public and donors and promote government policies based on respect for human rights, strengthening institutions and encouraging self-reliance.

Juvenile Violence and Delinquency in Somaliland: Why Incarceration is the Wrong Response is based on interviews carried out between 2014 and 2018 with police officers, prosecutors, judges, policy makers and social workers, family members of juvenile detainees, and former and current child detainees in Somaliland. It is also informed by Horizon's work implementing initiatives with Somaliland's formal justice sector since 2013.

Founded in 2013, Horizon's portfolio has included managing a justice sector project in Somaliland, funded by the Department for International Development (DFID), and work on civil service reform and revenue generation in Somaliland funded jointly by DFID and DANIDA. In 2017, Horizon conducted a baseline study in Somaliland to inform justice sector investment and interventions. The research and writing of *Juvenile Violence and Delinquency in Somaliland* was made possible by DFID.

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Introduction

To address the widespread perception of a dramatic increase in violent crimes and delinquent behaviour committed by youth, the new government in Somaliland has made the rehabilitation of young offenders a priority. Specifically, the government has identified the renovation of a former youth correctional centre, known as Mija-Caseye near the town of Berbera, as an investment in the protection and well-being of young people. The Minister of Justice, Abdiqani Mohamoud Ateye, laid the foundation stone for the centre on 25 April 2018.

Children who are convicted of crimes are incarcerated in overcrowded prisons in cells alongside adults, many of whom have committed violent crimes. These prisons offer young offenders no educational or vocational training opportunities, sports, or counselling, diminishing the possibility of a new life. Given this reality, the government's concern for the welfare of imprisoned children is commendable. A juvenile rehabilitation centre would, in fact, be in line with the 2007 Juvenile Justice Law (JL), which calls for children's pre-trial detention and rehabilitation centres.

However, *Horizon Institute (Horizon)* believes that it is premature to opt for the immediate establishment of any kind of rehabilitation centre. Because the criminal justice system functions primarily to arrest, detain and convict, this initiative would most likely just result in the increased incarceration of children.

There is a perception that youth violence in Somaliland is on the increase. Many prison commanders, police officers, prosecutors and judges insist there has been a surge in offences by children over the past five to ten years. Incidents of organised, and sometimes

violent, fighting between groups of young men in urban centres, referred to as "gang violence," has reinforced this viewpoint. Moreover, in the absence of social services for children, the police are on the front line of dealing with at-risk youth. This extensive involvement of law enforcement with troubled youth itself then reinforces the impression of a crisis.

To date, the response to the perception that youth violence and delinquency is on the rise has been to incarcerate juveniles. Underage children are imprisoned contrary to the law. Police routinely hold youth, as well as parents, siblings and other relatives, as "proxies" for young men sought by the police in connection with gang fights or other offences. Young people are unlawfully detained for attempting to migrate without proper paperwork (irregular migration). Parents are also turning to the criminal justice system to imprison unruly children for "parental disobedience."¹ Such responses to troubled youth create a system designed to detain and punish youth rather than rehabilitate.

Law enforcement, and the government as a whole, are right to be concerned with youth crime, both for the sake of the young people involved, but also for the victims and their families, and in the wider interests of maintaining peace and security. There is, however, no objective basis to confirm the nature and seriousness of reported crime trends because of the absence of accurate record keeping across the justice chain – from the police station through to the prisons.

In addition to the lack of statistics and data, no effort has been made to carry out in-depth research and analysis on the causes of

¹ Maintenance of the Public Order and Security Law (Public Order Law), Art. 33.

youth violence and delinquency, and what solutions are necessary and feasible. Somaliland youth face a breakdown of traditional family life, with many fathers absent from the day-to-day life of their children, and many mothers forced to work outside the home to support their families. The organised gang fights which have plagued towns such as Hargeisa and Borama, are due, to a great extent, to the near complete absence of recreational space. The open spaces where children played in the past are now largely privately owned land. It is not uncommon to see children playing on the main roads for want of an alternative.

The explosion of for-profit private education, without adequate government oversight, ensures a poor quality of education. This, coupled with the lack of vocational training facilities, results in, unsurprisingly, an exceedingly high level of unemployment. The lure of a prosperous life in Europe creates a new set of challenges as many young people embark on dangerous journeys. This is, in turn, forcing more parents to seek the help of the justice sector as they search for missing children or deal with unscrupulous smugglers.

Poverty keeps many children out of school. Boredom and the easy availability of *qat* lead to destructive activities and habits. The want of social service providers means that orphans, street children, drug addicts, and those with physical and mental disabilities have few places to turn for help and, as a result, often clash with the police.

Unless and until it is possible, on the basis of up to date and comprehensive data, to give accurate and meaningful answers to key “unknowns,” *Horizon* believes a rush to respond will not serve the interests of the young in Somaliland. These unknowns

include, but are not limited to: Why does the perception of increased criminal activity persist? Why is the legal system unable to respect the laws that already exist for the promotion of children’s rights? Why are parents turning to law enforcement to handle unruly children? How many children are informally detained in police stations and in prisons, and for which offences? What is triggering and facilitating gang violence? What can be done to improve prison conditions for those juveniles who are properly sentenced to jail terms? What should be the role of the customary system in diverting youth away from the criminal justice system? These questions are relevant, and urgent, because incomplete and imprecise record keeping is leaving justice sector actors without the necessary data to make informed decisions.

The new government’s interest in building a youth rehabilitation centre presents an opportunity not only to consider the pros and cons of such an initiative, but also to improve the justice system’s overall response. *Horizon* is publishing this short discussion paper to contribute to a renewed push for an overall child friendly justice system. To craft a realistic, feasible, responsive, holistic and culturally-appropriate approach, further data is imperative. Without an accurate picture of juvenile delinquency, any proposed solution will be haphazard at best and a disservice to the children who look to the justice sector for protection.

The response to juvenile crime needs to be informed by hard data and facts and underpinned by a commitment to respect the existing legal framework. Otherwise, a costly investment in a rehabilitation centre will merely raise expectations it cannot fulfil and add to the over incarceration of youth.

The Current Response to Youth Violence and Delinquency

Somaliland's youth often do not see their rights respected when they come into conflict with the law. From arbitrary arrest and detention to the denial of the right to a free and fair trial, juvenile delinquents face a system that seeks to punish and imprison rather than divert and rehabilitate.

Youth Below the Age of Criminal Capacity Arrested, Tried and Convicted

The JJJ sets the age of criminal responsibility at 15.² Only youth between the ages of 15 and 18 have capacity under the law to stand trial. Nevertheless, there are countless examples of children under the age of 15-years-old being prosecuted. Initial research suggests that judges look to both *Sharia* law and tradition when deciding at what age defendants can be held criminally responsible. Some judges also continue to apply the Criminal Procedure Code, which sets the age of criminal capacity at 14-years-old, even though the JJJ expressly overrides it.³

Arbitrary and Unlawful Arrest

The Constitution requires the police to arrest suspects with a warrant unless they catch them committing a crime.⁴ Reports indicate that after incidents involving young people, police tend to round up all the youth in a specific area and arrest them, regardless of whether or not they were suspected of engaging in criminal activity. Adnan Mohammed was arrested when he was 16 after a boy was murdered near his home. He explained that:

The [police] arrested everyone in the neighbourhood, around 20 [of us].⁵

When youth are arrested, either in groups or individually, the police rarely, if ever, notify parents as required by law.⁶ Afrah Mohamoud was out shopping when her 15-year-old son was arrested at home.

No one from the police station called and told me they had arrested my son. I came home, saw that he wasn't there and his younger siblings told me what happened.⁷

Arbitrary and Unlawful Detention

Once arrested, children are often unlawfully detained at police stations. For example, the police sometimes arrest and hold children as proxies for wanted family members and other youth. The Constitution prohibits the State from detaining persons who are not suspected of committing a crime,⁸ yet the police use proxy detention to encourage suspected persons to turn themselves in. Amal Hussein, living in Borama at the time, was first detained when she was only 12, and the second time when she was 16.

My mother had a fight with another mother. As she had left to go to another town, the police took me in for two days instead. No one harmed me but I was very scared.

The second time, her brother and a neighbour's son had a fight over football, and the families came to blows.

When the police came, my whole family had run away. But I was left making dinner and they dragged me outside and pushed me into a vehicle. I spent 15 days in detention because we could not reach an agreement. I

² JJJ Art. 10.

³ *ibid* Art. 3.

⁴ Somaliland Constitution Art. 25(2).

⁵ Interviewed in Hargeisa on 24 May 2015.

⁶ JJJ Art. 9.

⁷ Interviewed in Hargeisa on 24 April 2018.

⁸ Somaliland Constitution Art. 26.

was treated okay, but it was very cold in the cell. The first time I was detained, I was just a young child, and I didn't really know anything that was happening. But the second time, I was really scared that I'd have to stay there for a long time.⁹

As Amal's case illustrates, detaining young people at police stations is also used as leverage for customary settlements. Police arrest and hold accused youth until monetary agreements are reached between the families involved. Juveniles can be detained for indeterminate lengths of time during such negotiations. This often leads to illegal detention, since the detainee does not appear in court within 48 hours, as required by law,¹⁰ but remains in detention while the elders negotiate the case. Moreover, in cases where compensation is not agreed to, or cannot be paid, the cases proceed through the courts, after a child may have spent many days or weeks in police custody.

Children who the police catch trying to migrate irregularly, an activity known as *tahriib*, are also detained at police stations. Somaliland youth caught trying to leave the country without proper documentation are arrested by the Somaliland police and held at police stations until a parent or guardian can collect them. The act of attempting *tahriib* is not criminalised – nor should it be – making the arrest and detention of youth for such acts unlawful. But without a network of social workers that can respond to irregular migration, police, trying to prevent youth from leaving, lock them up at police stations although they have not committed any crime.

Even when detention at police stations is initially lawful, juveniles often remain on pre-trial detention – termed remand – far

⁹ Interviewed in Borama on 27 May 2015.

¹⁰ Somaliland Constitution Art. 27.

longer than the legal limit while their cases are being investigated. One judge explained that he remanded a 12-year-old child charged with murder.

We kept the accused child on remand in a police station for one year.¹¹

Under the law, this child should not have even been tried because 12 is below the age of criminal capacity. Regardless of his age, he should not have been held on remand for one year because the legal limit for alleged murder is capped at 90 days.¹²

Like most suspects in Somaliland, juveniles are very rarely released on bail. This violates the JJJ and the Constitution.¹³ Anecdotal evidence, however, suggests that courts in Hargeisa release children who commit petty crimes and are under the age of 15 to their parents. But, again, children under 15 do not have criminal capacity under the law and should not be standing trial in the first place.

Youth Deprived of Free and Fair Trials

Once arrested and detained, youth in Somaliland face an uphill battle in the courts. There are no juvenile justice courts and few judges are trained in working with young people. While justice sector actors have discussed the establishment of juvenile sections in courts, currently any accommodations for children are *ad hoc* efforts of individual judges.¹⁴

There is also an absence of defence lawyers and effective legal aid. The JJJ mandates that the State provide free legal assistance to destitute children.¹⁵ However, there are only

¹¹ Interview with judge in Hargeisa on 23 April 2018.

¹² Criminal Procedure Code Art. 47.

¹³ JJJ Art. 55; Somaliland Constitution Art. 27.

¹⁴ *Horizon Institute, Baseline Study Report*, 25-26.

¹⁵ JJJ Art. 5.3(d)(D).

five public defenders throughout Somaliland and they only work on crimes that carry a maximum potential prison sentence of more than ten years – termed assize cases – primarily rape and murder.¹⁶ There are also fewer than 100 private defence lawyers in Somaliland and the funding for legal aid providers is wholly dependent on external funding.¹⁷

As with adults, youth who are able to secure a legal defence find that their lawyers are routinely denied access to their clients and to evidence. Contrary to the JIL, defence lawyers report that the prosecution does not serve them with evidence in advance of trial,¹⁸ citing fears that they will interfere with witnesses. They often meet their client for the first time at trial.

At trial, children are rarely allowed to speak on their own behalf. The JIL gives juveniles the right to be heard during proceedings and mandates that judges appoint a lawyer or interpreter to assist children to express themselves when necessary.¹⁹ Unfortunately, juveniles rarely know their legal rights and do not demand the opportunity to speak in their own defence. Their parents are just as unlikely to be aware of their children's legal rights, given the general public's poor knowledge of the law.

Prisons Lack the Necessary Resources to Address Needs of Juvenile Detainees

Somaliland law requires the prison system to meet certain criteria. However, resource constraints make it virtually impossible for prisons to do so, and sentenced juveniles are imprisoned in conditions that can only jeopardise their futures.

¹⁶ *Baseline Study 4.*

¹⁷ *ibid* 52, 73.

¹⁸ JIL Arts. 78 and 80.

¹⁹ *ibid* Art. 14.

Under the law, all detainees, including children, are guaranteed adequate food, clothing, bedding, medical and healthcare facilities, family contact and the right to complain about prison conditions and treatment by prison staff.²⁰ Prisoners are granted the right to educational and vocational opportunities, health and hygiene, and regular exercise. The law imposes strict limitations on the type of punishment that can be meted out. And juveniles have the right to be detained separately from adults and to have “care and support.”

In reality, the protections provided for in law are not realised. A completely mixed population means that juveniles are in shared cells with adults convicted of all levels of crimes, including rape and murder. Prisons in urban areas are overcrowded. Aging buildings mean that prisoners encounter poor sanitation and limited water. And the prisoners' families often have to bring food, clothes and bedding, and access to medical care is sporadic.

Moreover, the prison system is entirely punitive, not rehabilitative. This contributes to youth, once released, facing difficulties re-integrating into society. The Constitution stipulates that the State is responsible for the rehabilitation and skills training of prisoners so they can be released as productive members of society.²¹ The significant resource constraints mean, unfortunately, that educational and vocational opportunities in prison are extremely limited.

As of 2017, only one of the 13 prisons in Somaliland provided vocational training and none had library facilities for prisoners.²² This means that once in prison, the education of juveniles is put on hold.

²⁰ Somaliland Prison Law (2017); JIL Art 9.

²¹ Somaliland Constitution Art. 27(8)

²² *Baseline Study* 68.

Yahye Hussein was serving a one-year sentence in Hargeisa Central Prison when he was 17. His remarks echoed those of many children in prisons across the country:

My worry is that I'm missing out on school. I have no access to education. We are not learning in this place. There is nothing much to do.²³

The Commander of Borama Prison sees first-hand the pitfalls of a prison system that lacks constructive activities and cannot provide opportunities for rehabilitation:

They have no education or skills, and we need to provide it so that they...don't keep coming back. If there was a ... place for teachers to come in, plus a place for exercise, football or even walking, prison would be more suitable for children, instead of them being locked up all day.²⁴

Limited Application of Diversion

Many juveniles do not need to end up behind bars but they do because diversion is not widely applied. Diversion – the process in which children are diverted from formal criminal proceedings to non-custodial, social services – is indispensable to child-friendly justice. The JJJ allows for diverting youth who have criminal capacity under the law away from the criminal justice system. Diversion should, therefore, apply where appropriate, to children between the ages of 15 and 18. The diversion options outlined by the JJJ include apologies, community service, peer group support, counselling and participation in educational and vocational training.

Initial findings show that in practice diversion is understood as only non-

²³ Interviewed at Hargeisa Central Prison on 30 November 2014.

²⁴ Interviewed at Borama Prison on 27 May 2015.

custodial sentencing for children younger than 15. A judge in Hargeisa, Ahmed Dalmar, commented that “we divert children who are under the age of 15 years because we don't want them in the prisons.”²⁵

At least in the capital of Hargeisa, children under 15 – who should not be held criminally responsible in the first place – are tried and, if convicted, given a non-custodial sentence. Preliminary research indicates that these sentences are usually payment of compensation to the victim. Judge Dalmar described sentencing juveniles to clean courts or schools and appointing staff to monitor the children. While non-custodial sentencing is an encouraging practice, evidence suggests that juveniles between the age of 15 and 18 do not benefit, and are imprisoned.

Parents Use and Misuse “Parental Disobedience” as Punishment

Parents also put additional, and unnecessary, pressure on Somaliland's justice system to address juvenile delinquency. As a consequence, they contribute to the needless incarceration of children by turning to the criminal justice system to punish unruly children. The Public Order Law allows parents to have their child imprisoned by a District Court for up to six months for “parental disobedience.”²⁶ Prosecutors, judges, defence lawyers and prison officers agree that parental disobedience is currently one of the most common offences committed by children in Somaliland. Youth are sentenced to significant prison time for

²⁵ Interviewed at the Hargeisa Regional Court on 23 April 2018.

²⁶ Public Order Law, Art. 33(3): “A parent may request the district court for reformatory detention of his child aged more than 15 years and the court may, after consideration, and having satisfied itself of the reasons advanced by the parent, sentence the son to a detention of a period not exceeding six months.”

non-criminal conduct such as chewing *qat*, refusing to attend school and general misbehaviour. Both in theory and in practice, parental disobedience is hugely problematic and contributes to increasing rates of juvenile incarceration.

Police reportedly often imprison underage youth at stations for parental disobedience without trial. The law states that it pertains to children who are 15 years or older and that a District Court judge *must* determine guilt. In practice, many parents approach the police to detain children who are under the age of 15 as a punishment, and the police comply. Moussa Hanfi, the head of Borama Central Police Station in 2015, complained that children as young as nine years old were brought to the station, adding that “some are six or seven years old – younger than that we won’t accept.”²⁷

Judges also mete out sentences for parental disobedience that exceed the statutory limit. While the law states that the maximum sentence is six months, some individuals are detained for much longer periods of time. Parents often also accuse their child of criminal conduct like alcohol consumption and religious blasphemy in order to extend the sentence.

Families also deliberately abuse parental disobedience to settle private matters and imprison family members considered impediments for one reason or another. Parents or other family members use parental disobedience in order to remove individuals from intra-familial conflict, such as fights over land inheritance, or to prevent them from going on *tahriib*. This has led to adults being unlawfully detained for parental disobedience. One man imprisoned in

Hargeisa Central Prison for parental disobedience was in his sixties.

It is easy to sympathise with parents who feel they have no other place to turn. Particularly when dealing with *qat* addiction and mental illness, parents may turn their child over to the police because they feel detention is the only option. But incarceration cannot be a substitute for social services.

The Negative Impact of the Current Response to Youth Violence and Delinquency

Children Suffer

As in every society, children are among the most vulnerable groups in Somaliland. The criminal justice system’s overreliance on incarceration means that juveniles are often detained in poor conditions for indeterminate amounts of time. There are serious long-term effects of detention on youth, and many, once they are released, experience depression and anxiety. Detained children emerge permanently disadvantaged due to missed educational opportunities. This is coupled with the fact that many juvenile delinquents face other challenges, such as poverty, *qat* addiction, and lack of employment. Sami Bashir, imprisoned when he was 17, described the impact three months in prison had on him.

After I was released, I was sad and worried. I missed my exams in prison and I didn't have the morale to go back to school. I was guilty, and I knew I had to take the sentence. The thing that bothered me was the injustice in the prison and not being treated like a human.²⁸

²⁷ Interviewed at Borama Central Police Station on 27 May 2015.

²⁸ Interviewed in Borama on 27 May 2015.

Formerly incarcerated youth are often adrift and feel cut off as a teacher from Borama commented.

There is no thought or plan for when these children are released from custody. As a result, children themselves face further challenges from their community as they are seen as outcasts.²⁹

Public Trust in the Formal Justice System is Eroded

The excessive reliance on arrest and detention, and continued violation of juvenile legal protections, undermines the public's trust in the formal system. In February 2018, Afrah Mohamoud, was taken into police custody in Hargeisa as a proxy to force her 15-year-old son, accused of fighting with other boys, to hand himself over to the police. Then in March 2018, her son was arrested as a proxy for another youth accused of fighting. On both occasions, she complained of aggression and intimidation by the police against her and her children. The experience has left her with little faith in the police. She explained:

I have no hope or trust that the police will protect anyone. All they do is create violence.³⁰

The common belief that the police frequently arrest children (as well as adults) to encourage the payment of a bribe further damages public confidence.

Doubts about the formal justice system, compounded by issues of financial and physical access to court services, drive members of the public to turn to the customary system. The public does not

differentiate between formal and customary justice mechanisms and chooses whichever option they believe will give them the best outcome. The choice is often customary law. Individuals may fail to report a crime, or parties to a dispute may enter into customary negotiations in parallel with criminal prosecutions.

The convergence of scepticism about the formal system and reliance on customary law has also led to people not taking the criminal justice system seriously. Muna Ibrahim, a legal professional, said that some children do not fear the law because they know that their liberty can be bought.

Children are not scared of the law. They believe that they can get away with any offence as long as their parents are able to pay and then they'll be released.³¹

This undermines the ability of the formal justice system to deter crime. Under customary agreements the extended family or clan pays a portion of the settlement so individuals are not sufficiently punished, particularly for serious crimes, and this leads to repeat offenders.

The overlap of the formal and customary systems results in the oppressive elements of both. Detention, the denial of legal protections and procedural safeguards, and the absence of individual accountability together erode the proper function of each system. This raises serious questions of how the formal and customary systems can work together to divert juveniles away from court proceedings.

²⁹ Deeqa Mumin interviewed in Borama on 2 March 2015.

³⁰ Interviewed in Hargeisa on 24 April 2018.

³¹ Interviewed in Hargeisa on 13 June 2015.

Somaliland Can Easily Improve the Response to Youth Violence and Delinquency

There are a number of cost effective changes that can be made immediately and easily to current law and policy in order to make the system more humane and child-friendly. Implementing these changes would, at the same time, ease the strain on the system by reducing the number of persons entering it. Each of the recommendations below has the goal of rehabilitation rather than punishment, with the intent of limiting the number of child offenders who are sent to prison to only those juveniles who have committed the most serious crimes.

Uphold Legal Protections

Somaliland's laws provide ample protections for juveniles that, if put into effect, would create a much more child friendly justice system. If justice actors implemented the existing legal framework for youth – in particular the JJJ – as well as the relevant provisions of the Constitution, the Penal Code and the Criminal Procedure Code, there would be far fewer children languishing in police stations, being prosecuted by the courts and serving prison sentences. Many of these laws, especially the JJJ, should be reformed to afford children better protection. However, flawed as they are, they extend considerable procedural protection to children. The failure to give heed to the laws in place goes a long way to explain why far too many juveniles are coming into contact with the police, the courts and the prisons.

Enforce the Age of Criminal Capacity

An essential part of upholding current legal protections for juveniles is enforcing the age of criminal capacity. The JJJ states that

children under the age of 15 do not have criminal capacity and must not be brought before the criminal justice system, while the age of “full criminal responsibility” is 18 years old.³² This means that juvenile justice concerns *only* children who are between 15 and 18 years old. Children younger than 15 should not be arrested or made to stand trial because they do not have criminal capacity. This should be strictly enforced. Respecting the age of criminal capacity in the JJJ would not only uphold the law but also keep many youth from entering the system.

Strengthen Systems to Determine Age Accurately

Respecting the age of criminal capacity will have a limited impact unless it is possible to determine what age a person is. Very few children have birth certificates. If the age is uncertain, the JJJ requires judges to determine the age of the child “with the help of a recognised medical doctor.”³³ Judges in urban areas routinely send children to the hospital to determine age. Doctors may check x-rays of a person's teeth or wrists, although this is inaccurate because children grow at different rates. Similarly, checking whether a person has reached puberty is invasive and imprecise. Somaliland should continue efforts of birth registration and create a centralised database that houses records on births and deaths.

Expand and Deepen the Current Application of Diversion

Judges in Somaliland only use diversion to give youth under 15, who should not be standing trial at all, non-custodial sentences. This finding is based on discussions with judges in Hargeisa. It is unknown whether

³² JJJ Arts. 10 and 64.2.

³³ *ibid* Art. 64.

diversion is applied outside of the capital city, to what extent and for which offences. However, the use of diversion as non-custodial sentencing in Hargeisa indicates a willingness of judges to consider diversion and thus the possibility to expand its use.

The use of diversion as non-custodial sentencing should be considered in all non-assize cases of children between the ages of 15 and 18. *Horizon's* work indicates that this age group is not considered for diversion and that their age is only used as a mitigating factor for sentencing. Applying non-custodial sentences to juveniles between 15 and 18 years old would keep children out of prison and has no cost implications.

Not all cases should be eligible for diversion. It is crucial that the criminal justice system prosecutes perpetrators of the most serious crimes. The JJJ states that a case *must* be considered for diversion if the crime committed is punishable with imprisonment for a period of less than ten years. It does not address that certain offences are inappropriate for diversion, such as rape or murder where the sentence may be more than 10 years. Initial research indicates that judges give non-custodial sentences when children under the age of 15 are convicted of murder. It is recommended that this practice not be applied to juveniles between 15 and 18, and that assize cases be ineligible for diversion.

The role of customary law and actors also needs to be better understood. In the absence of social services, the customary system may offer an avenue for diverting children away from the criminal justice system. Currently, the customary system is used for negotiating compensation agreements. Dismissing juvenile cases from the criminal justice system on the basis of monetary settlements does release children from

detention. But it also leads to the miscarriage of justice and fails to hold individual perpetrators accountable because it is a form of collective responsibility.

However, the potential for a more robust and visible role for customary law needs to be explored. Nothing has been done to examine how customary actors can help implement elements of diversion envisioned under the JJJ. For example, the JJJ suggests that juvenile offenders apologise to victims to encourage the young to recognise the wrongs they have done and face the people they have harmed. Customary law procedure also includes admitting to the wrong committed. Ensuring youth apologise could be one way that the customary system is used to expand diversion.

End Proxy Detention

The practice of proxy detentions by the police, which is unconstitutional and illegal, should be abolished. Proxy detentions are an attack against innocent people who have themselves committed no crime whatsoever.

Repeal the Law Allowing for Parental Disobedience

Article 33(3) of the Public Order Law that allows parents to imprison children for parental disobedience should be repealed. Criminalising the conduct of unruly children goes against the letter and spirit of the Constitution and the JJJ. Repealing this law would respect the rule of law and immediately reduce the number of juveniles being detained and imprisoned.

Improve Record Keeping on Children in Conflict with the Law

Record keeping has to improve so reforms of juvenile justice are informed but also so

the system can more effectively process cases. Individuals, including youth, often get “forgotten” in detention because the prosecution service and courts do not know they are detained. Collecting accurate data in a uniform manner at every stage of the criminal justice process would help ensure juvenile cases are processed.

Expand Efforts to Increase Legal Awareness Among the Public

The general public lacks awareness about defendants’ rights, the role of defence lawyers and the criminal justice process. Children and parents should be aware of the laws relating to arrest, pre-trial detention, right to a lawyer, right to bail, court procedure and the use of detention as a measure of last resort. *Horizon* has begun providing legal empowerment to women and children in IDP communities in Hargeisa, and beneficiaries report an increased level of confidence in knowing how to navigate the criminal justice system. Trainings geared toward youth and their families should be expanded across Somaliland.

Provide Legal Aid for Juveniles

While empowering youth and parents to better understand the criminal justice system will help, providing legal aid lawyers to indigent defendants accused of serious crimes is a necessity. The establishment of a referral system would help to facilitate the notification of defence lawyers and legal aid providers when such a child is detained.

Prioritise Reforms that Keep Youth Out of Detention

Somaliland should focus its efforts on keeping youth out of prison. However, for children who must be detained, resources should be allocated to improve

infrastructure. This could include building separate facilities for juveniles in existing prisons. But what is crucial is for the treatment of detained children to improve, and this largely does not depend on infrastructure. Defence lawyers should be allowed access to clients and evidence. Police should notify parents of an arrest. And the safeguards spelt out in Somaliland law should be followed. But above all, reforms should emphasise keeping children out of the criminal justice system.

Conclusion: Incarceration is the Wrong Response

Juvenile delinquency and criminal behaviour by young people is a reality every society faces. Without accurate data, it is impossible to know for sure whether young people in Somaliland are involved in more crime than in the past, and if the criminal justice system’s response is having any impact because the rate of recidivism is unknown. What is clear is that a wholly punitive reaction to youth violence and delinquency is the wrong response because children suffer in detention, miss out on their education, and face difficulties re-integrating into society.

Addressing youth crime is a collective responsibility that calls on all sectors of society, and not merely the justice system, to respond appropriately. The goal of this common endeavour should be an examination and an understanding of the root causes before any new solutions are proposed. Parents in particular, as well as teachers, should be working alongside law enforcement to discourage and rein in the anti-social behaviour of their children and students. Instead, too many are handing over their obligations to a justice sector which has neither the human or financial resources, nor the expertise, to cope as it should.