



## Inhuman sentencing of children in Somalia

Draft report prepared for the Child Rights Information Network ([www.crin.org](http://www.crin.org)), March 2011

### Introduction

Islamic law, customary law and secular criminal law are applicable in Somalia but there is no coherent, functioning national legal system and no clear prohibition of capital punishment, corporal punishment or life imprisonment for child offenders throughout the country.

The Transitional Federal Government (TFG) is the internationally recognised government of Somalia, and in 2009 the Transitional Federal Parliament voted to implement Sharia as the national law. According to the newly elected President, this would be a “moderate” interpretation of Sharia. However, the TFG controls only a part of the capital city of Mogadishu. Other areas in South/Central Somalia are under the control of armed opposition groups, mostly al-Shabaab and Hizbul Islam, which impose a strict interpretation of Islamic law. In the north, the autonomous region of Puntland and the self-declared independent Republic of Somaliland are relatively more stable, with functioning governments and legal systems.

Under the Transitional Federal Government, secular legislation in force includes the Transitional Federal Charter 2004, the Constitution 1960, the Penal Code 1962 and the Juvenile Courts and Reformatories Law 1970. In 2010, a new draft Federal Constitution was under discussion.

In Puntland, the law is based on Sharia and efforts have been made to harmonise customary law with international human rights standards and Sharia.<sup>1</sup> Other legislation relevant to juvenile justice includes the Penal Code 1962 and the Juvenile Courts and Reformatories Law 1970. A new Puntland Constitution was drafted in 2010 and was due to be put to a public referendum. In January 2011, the Puntland Government reportedly announced that it was breaking its ties with the TFG until a legitimate federal authority is in place in Mogadishu which properly represents Puntland as part of the Federation of Somalia.<sup>2</sup> In Somaliland, the main laws governing juvenile justice include the Juvenile Justice Law 2007, the Somaliland Constitution 2001, the Organisation of the Judiciary Law 2003 and the Penal Code 1962.

There is no effective minimum age of criminal responsibility in Somalia.<sup>3</sup> In South/Central Somalia and in Puntland, the Somali Penal Code 1962 sets the minimum age of criminal responsibility at 14 and provides for reduced punishments for persons aged 14-17, but it also authorises sending children under 14 to reformatories.<sup>4</sup> The Juvenile Courts and Reformatories Law 1970 defines a

<sup>1</sup> UNDP Somalia (2009), *Puntland Traditional Leaders Conference, 7-11 February 2009, Garowe: Declaration*

<sup>2</sup> <http://www.puntlandgovt.com/>, accessed 22 February 2011

<sup>3</sup> Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Farnham: Ashgate Publishing Limited

<sup>4</sup> Articles 59, 60 and 177

child as under 14 and a young person as 14-17.<sup>5</sup> It states that a juvenile court has exclusive jurisdiction to hear and determines cases relating to children and young people in relation to any offence except murder and repeals inconsistent laws.<sup>6</sup> However, it is possible that this law has never been brought into force,<sup>7</sup> and a new juvenile justice law is reportedly being drafted in Puntland.

In Somaliland, the Juvenile Justice Law 2007 puts the age of criminal responsibility at 15 and harmonises the provisions of secular, Sharia and customary laws.<sup>8</sup> However, the Law has not been fully implemented and much of the work of the lower courts in criminal justice matters, especially involving children, has until very recently been carried out by regional security committees.<sup>9</sup> During the 1980s, sentences handed down by these committees included life imprisonment and the death penalty, though more recently they appear to have been less draconian.<sup>10</sup> Claims that the committees are lawful under the Public Order Law 1963 are disputed, as is the extent to which that law is still in force.<sup>11</sup>

## Legality of inhuman sentencing

### *Death penalty*

Child offenders may not be sentenced to death under secular law but they may receive capital punishment under Islamic law and possibly customary law.

In South/Central Somalia and in Puntland, the Somali Penal Code provides for a person aged 14-17 at the time of an offence punishable by death to be sentenced instead to imprisonment for life or imprisonment for 20-30 years.<sup>12</sup> A child under 14 convicted of an offence punishable by death would instead be committed to a reformatory for a period not less than three years.<sup>13</sup> The Juvenile Courts and Reformatories Law 1970 lists the possible dispositions of juvenile courts as unconditional discharge, conditional discharge and committal to a reformatory until the age of 18 or for any shorter period;<sup>14</sup> it does not provide for capital punishment. In Somaliland, the Juvenile Justice Law 2007 prohibits capital punishment for persons under 18.<sup>15</sup>

Under Islamic law, *hadd* offences (for which the punishment is mandatory) punishable with death include apostasy, murder, adultery and armed robbery. Persons typically become liable for such

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<sup>5</sup> <sup>1</sup> Article 1

<sup>6</sup> <sup>1</sup> Articles 3 and 9

<sup>7</sup> <sup>1</sup> <http://www.reliefweb.int/rw/res.nsf/db900SID/OCHA-7VJAVD>, accessed 21 February 2011

<sup>8</sup> <sup>1</sup> Reported at [http://www.unicef.org/somalia/reallives\\_5434.html](http://www.unicef.org/somalia/reallives_5434.html), accessed 21 February 2011

<sup>9</sup> <sup>1</sup> Human Rights Watch (2009), "*Hostages to Peace*": *Threats to Human Rights and Democracy in Somaliland*, New York: Human Rights Watch; A/HRC/15/48, 16 September 2010, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*, paras. 38 and 40

<sup>10</sup> <sup>1</sup> Human Rights Watch (2009), "*Hostages to Peace*": *Threats to Human Rights and Democracy in Somaliland*, New York: Human Rights Watch

<sup>11</sup> <sup>1</sup> For example, see Human Rights Watch (2009), "*Hostages to Peace*": *Threats to Human Rights and Democracy in Somaliland*, New York: Human Rights Watch ; Jama, I. H. (n.d.), "Public Order Law in Somaliland : Learning the lessons of democracy", [http://www.somalilandlaw.com/PUBLIC\\_ORDER\\_LAW\\_IN\\_SOMALILAND\\_Article.htm](http://www.somalilandlaw.com/PUBLIC_ORDER_LAW_IN_SOMALILAND_Article.htm), accessed 21 February 2011

<sup>12</sup> Articles 60 and 119

<sup>13</sup> <sup>1</sup> Article 177

<sup>14</sup> <sup>1</sup> Article 6

<sup>15</sup> <sup>1</sup> Reported at [http://www.unicef.org/somalia/reallives\\_5434.html](http://www.unicef.org/somalia/reallives_5434.html), accessed 21 January 2011 and <http://www.somalilandlaw.com/>, accessed 22 March 2011

crimes from the age of puberty. It has been reported that crimes such as murder are typically dealt with under Sharia law in Somalia.<sup>16</sup>

According to customary law (*Xeer*) the victim's family has the right to kill a family member of the alleged perpetrator.<sup>17</sup> We have no information regarding the application of such law to children.

### ***Corporal punishment***

Corporal punishment is lawful as a sentence for crimes under Islamic law, except possibly in Somaliland.

The Somali Penal Code makes no provision for judicial corporal punishment. In Somaliland, the Constitution explicitly prohibits physical punishment<sup>18</sup> and it is reportedly prohibited under the Juvenile Justice Law 2007,<sup>19</sup> but we have been unable to confirm whether this prohibition applies to offences under Islamic law.

We have not been able to obtain detailed information on the application of corporal punishment under Islamic law as envisaged when the Transitional Federal Parliament voted to adopt Sharia as the national law in 2009. 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.

### ***Life imprisonment***

Imprisonment for life is lawful as a sentence for child offenders in South/Central Somalia and in Puntland; it is unlawful in Somaliland.

According to the Somali Penal Code, a person aged 14-17 convicted of a capital offence can be sentenced to life imprisonment or imprisonment for 20 to 30 years; if the original punishment for an offence is life imprisonment, it is reduced to imprisonment from 20 to 24 years.<sup>20</sup> The Code states that a child under 14 may not be sentenced to life imprisonment but in lieu should be committed to a reformatory for not less than three years.<sup>21</sup> These provisions were repealed by the Juvenile Courts and Reformatories Law 1970, which states that no child under 14 should be sentenced to imprisonment and no young person aged 14-17 shall be sentenced to imprisonment unless the court considers that no other measure is suitable.<sup>22</sup> However, this restriction would presumably not apply for the offence of murder, over which the juvenile court has no jurisdiction,<sup>23</sup> and as already noted, it appears that the Juvenile Courts and Reformatories Law was never brought into force. In

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<sup>16</sup> ¶ A/HRC/13/65, 23 March 2010, *Report of the independent expert on the situation of human rights in Somalia*, Shamsul Bari, para. 66

<sup>17</sup> ¶ A/HRC/12/44, 17 September 2009, *Report of the independent expert on the situation of human rights in Somalia*, Shamsul Bari, para. 66

<sup>18</sup> ¶ Article 24

<sup>19</sup> ¶ Reported at [http://www.unicef.org/somalia/reallives\\_5434.html](http://www.unicef.org/somalia/reallives_5434.html), accessed 1 November 2010 and <http://www.somalilandlaw.com/>, accessed 22 March 2011

<sup>20</sup> ¶ Articles 60 and 119

<sup>21</sup> ¶ Article 177

<sup>22</sup> ¶ Articles 9 and 105

<sup>23</sup> ¶ Article 3

Somaliland, the Juvenile Justice Law 2007 prohibits life imprisonment and imprisonment for longer than 15 years.<sup>24</sup>

Life imprisonment is not a punishment under Islamic law or customary law.

## **Inhuman sentencing in practice**

There are numerous reports of the imposition of harsh punishments in Somalia. Many – but not all – concern extrajudicial punishments imposed by the armed opposition groups in South/Central Somalia.<sup>25</sup> There are also reports of stoning, beheading, amputation and flogging,<sup>26</sup> as well as death sentences handed down by military and other courts.<sup>27</sup> From 2004 to 2008, more than 17 executions were recorded.<sup>28</sup> 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 Sharia court.<sup>29</sup> Executions and amputations carried out by al-Shabaab and Hizbul Islam are often in public before large crowds including children.<sup>30</sup>

## **Progress towards prohibition and elimination**

### ***Law reform needed***

Legislation should be enacted to explicitly prohibit capital punishment, corporal punishment and life imprisonment for persons under 18 at the time of the offence, including under Sharia and customary law.

### ***Law reforms under way***

A draft Federal Constitution and a draft new Constitution in Puntland are under discussion. As at 2010, the draft Federal Constitution would provide for every person's right not to be subjected to cruel, inhuman or degrading treatment or punishment and for children (under 18) to be detained only as a last resort and for as short a time as possible.<sup>31</sup>

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<sup>24</sup> <sup>1</sup> Reported at [http://www.unicef.org/somalia/reallives\\_5434.html](http://www.unicef.org/somalia/reallives_5434.html), accessed 21 January 2011, and <http://www.somalilandlaw.com/>, accessed 22 March 2011

<sup>25</sup> <sup>1</sup> For example see A/HRC/12/44, 17 September 2009, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari* and <http://www.handsoffcain.info/>, accessed 21 February 2011

<sup>26</sup> <sup>1</sup> For example see A/HRC/13/65, 23 March 2010, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*; A/HRC/12/44, 17 September 2009, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*; Human Rights Watch (2010), *Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia*, New York: Human Rights Watch

<sup>27</sup> <sup>1</sup> <http://www.handsoffcain.info/>, accessed 21 February 2011; Amnesty International (2010), *Amnesty International Report 2010*, London: Amnesty International

<sup>28</sup> <sup>1</sup> 18 December 2010, E/2010/10, *Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty: Report of the Secretary-General, Table 2*; <http://www.handsoffcain.info/>, accessed 21 February 2011

<sup>29</sup> <sup>1</sup> A/HRC/10/85, 24 February 2009, *Report of Shamsul Bari, independent expert appointed by the Human Rights Council on the situation of human rights in Somalia*, para. 17; Amnesty International (2009), *Amnesty International Report 2009*, London: Amnesty International ; A/HRC/12/44, 17 September 2009, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*, para. 52

<sup>30</sup> <sup>1</sup> <http://www.handsoffcain.info/>, accessed 21 February 2011

<sup>31</sup> <sup>1</sup> Articles 20 and 34

UNDP is assisting the authorities in a Rule of Law and Security (ROLS) Programme which has identified the establishment of a juvenile justice system as a key element. UNDP and UNICEF are developing a juvenile justice law for Puntland. In 2009, a Traditional Leaders Conference was held in Garowe, Puntland, which aimed, among other things, to revise and standardise customary law and to review aspects of it which are contrary to international human rights standards and Sharia. The Conference adopted a Declaration which set out a number of agreements, including confirmation of the leaders' view that the traditional system is best suited to deal with juvenile justice, calling on police and other concerned parties to settle cases involving children through customary law before passing them to the police stations and public prisons, and advocating for a formal law to address violations of children's rights.<sup>32</sup>

Somaliland is slowly replacing pre-1991 laws to harmonise legislation with the Somaliland Constitution. In 2010, the newly elected President of Somaliland announced the abolition of the security committees,<sup>33</sup> and a new Public Order Law to replace the 1962 law is due to be submitted to Parliament.

### *National campaigns*

We are not aware of any national campaigns on inhuman sentencing of children in Somalia. In Somaliland, a number of groups, including the Somaliland Forum and the Somaliland Lawyers' Association successfully campaigned for the abolition of the security committees and local human rights defenders are reportedly campaigning for the abolition of the death penalty.<sup>34</sup>

## **National and international law conflicting with inhuman sentencing**

### *Constitutional law at federal level*

When the Transitional Federal Government voted to adopt Sharia law in 2009, it was reported that Sharia law would replace the Transitional Federal Charter of the Somali Republic 2004.<sup>35</sup> However, as at February 2011, the Charter is still in force. The following articles are relevant to the issue of inhuman sentencing:

#### Article 3 (Supremacy of law)

“(1) The Transitional Federal Government of the Somali Republic shall be founded on the supremacy of the law and shall be governed in accordance with this Charter.

(2) This Charter for the Transitional Federal Government shall be the supreme law binding all authorities and persons and shall have the force of law throughout the Somali Republic. If any law is inconsistent with this Charter the Charter shall prevail....”

#### Article 4 (Interpretation of the Charter)

“(1) The Charter shall be interpreted in a manner: -

- (a) that promotes national reconciliation, unity and democratic values;
- (b) that promotes the values of good governance;

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<sup>32</sup> <sup>1</sup> UNDP Somalia (2009), *Puntland Traditional Leaders Conference, 7-11 February 2009, Garowe: Declaration*

<sup>33</sup> <sup>1</sup> [http://www.somalilandlaw.com/somaliland\\_security\\_committees.html#Heading](http://www.somalilandlaw.com/somaliland_security_committees.html#Heading), accessed 21 February 2011

<sup>34</sup> <sup>1</sup> See [http://www.somalilandlaw.com/somaliland\\_security\\_committees.html#Heading](http://www.somalilandlaw.com/somaliland_security_committees.html#Heading) and <http://www.handsoffcain.info/>, accessed 21 February 2011

<sup>35</sup> <sup>1</sup> *CNN.com*, 18 April 2009

(c) that advances human dignity, integrity, rights and fundamental freedoms and the Rule of Law....”

#### Article 8 (Religion)

“... (2) The Islamic *Sharia* shall be the basic source for national legislation.”

#### Article 15 (Equality of the citizens before the law)

“(1) All citizens of the Somali Republic are equal before the law and provisions of this Transitional Federal Charter and have the right to equal protection and equal benefit of the law without distinction of race, birth, language, religion, sex or political affiliation.

(2) Equality shall include the full and equal enjoyment of all rights and freedoms.”

#### Article 16 (Right to life, personal liberty and security)

“(1) Everyone shall have the right to life and no person shall be deprived of his/her life.

(2) No person shall be deprived of his/her personal liberty, personal freedom and personal security.

...

(4) Any physical or moral violence or action against a person subject to restriction of personal liberty shall be punishable as a crime and hence is prohibited.....”

#### Article 69 (International and bilateral relations)

“(1) The Transitional Federal Government of the Somali Republic shall uphold the rules of international law and all international treaties applicable to the Somali Republic and subject to the legislative Acts of Parliament, international laws accepted and adopted shall be enforced....”

Under article 71 of the Charter, it shall have legal effect until a National Federal Constitution is in place, which should be based on the Charter, and until that time the 1960 Somalia Constitution and other laws apply to matters not covered by the Charter and not inconsistent with it. The articles of the 1960 Constitution relevant to inhuman sentencing are as follows:

#### Article 3 (Equality of the Citizens)

“All citizens, without distinction of race, national origin, birth, language, religion, sex, economic or social status, or opinion, shall have equal rights and duties before the law.”

#### Article 6 (The Republic in the International Order)

“(1) The generally accepted rules of international law and international treaties duly concluded by the Republic and published in the manner prescribed for legislative acts shall have the force of law....”

#### Article 7 (Human Rights)

“The laws of the Somali Republic shall comply, in so far as applicable, with the principles of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948.”

#### Article 16 (Right to Life and to Personal Integrity)

“(1) Every person shall have the right to life and to personal integrity.

(2) Arbitrary limits to such rights may not be established.

(3) The law may prescribe the death penalty only for the most serious crimes against human life or the personality of the State.”

#### Article 17 (Personal Liberty)

“(1) Every person shall have the right to personal liberty....”

Article 18 (Guarantees in Cases of Restriction of Personal Liberty)

“Any physical or moral violence against a person subject to restriction of personal liberty shall be punishable as a crime.”

Article 23 (Social Equality)

“All persons are equal in social dignity.”

Article 44 (Social Purpose of Punishment)

“Punishments restrictive of personal liberty shall not consist of treatment contrary to feelings of humanity or be such as to obstruct the moral rehabilitation of the convicted person.”

Article 50 (The Doctrine of Islam in the Legislation)

“The doctrine of Islam shall be the main source of the laws of the State.”

Article 67 (International Treaties)

“The Assembly shall authorize by law the ratification of political, military and commercial international treaties or of treaties which involve a modification of the law or financial commitments not included in the budget.”

Article 98 (Constitutionality of Laws)

“(1) Laws and provisions having the force of law shall conform to the Constitution and to the general principles of Islam....”

In the Draft Federal Constitution under discussion in 2010, the relevant articles include:

Article 1 (Founding principles)

“(1) The Constitution of Somalia is based on the foundations laid by the Holy Quran and Sunna and promotes the higher objectives (maqasid) or Shari'ah and social justice.

...

(3) The Constitution of Somalia promotes respect for human rights, and the achievement of social justice, the rule of law, general standards of international law and justice, participatory consultative and inclusive government, separation of powers between the legislature, executive and an independent judiciary, with appropriate checks and balances to ensure accountability, transparency and responsiveness to the people....”

Article 2 (State and religion)

“... (3) No law which is not compliant with the general principles and with Shari'ah can be enacted.”

Article 3 (Supremacy of the Constitution):

“(1) The Constitution of Somalia, based on the foundations laid by Shari'ah, is the supreme law of the country....”

Article 16 (Human dignity)

“(1) Human rights are a manifestation of human dignity. Human dignity is a God-given right of every human being and it is the manifestation of human dignity, and therefore it is inviolable and must be protected and respected by all.

(2) State power must not be exercised in a manner that disregards human dignity.”

#### Article 17 (Equality):

"(1) Everyone is equal before the law.

(2) The state may not discriminate against a person on any grounds, including but not limited to: race, color, clan, ethnic or social origin, culture, dialect or language, sex, birth, disability, religion, political or other opinion, occupation and property.

(3) Discrimination occurs if the effect is to impair or restrict a person's rights, even if the actor has no intention to do so...."

#### Article 18 (Life)

"Everyone has the right to life."

#### Article 20 (Liberty and security of the person)

"(1) A person has the right to personal liberty.

(2) A person has the right to personal security. Personal security includes freedom from unlawful arrest, all forms of violence from public or private sources, freedom from any form of torture, and freedom from any form of cruel, inhuman or degrading treatment or punishment...."

#### Article 34 (Children)

"... (2) Every child has the right to be protected from mistreatment, neglect, abuse or degradation.

...

(4) A child may be detained only as a last resort, and then only for as short time as possible and separately from adults, except the child's immediate family, and in appropriate conditions. The child's immediate family must be informed of the child's detention as soon as practicable.

...

(8) In this Article a 'child' means any person under 18 years of age."

#### Article 45 (Interpretation of the fundamental rights)

"(1) When interpreting and applying the rights sets out in this chapter, a court shall take an approach that seeks to achieve the purposes of the rights and the values that underlie them. The court may consider the Shariah and international law and the decisions of courts in other countries, though it is not bound to follow those decisions.

(2) When interpreting and applying the law generally, every court or other forum shall consider the relevance of the provisions of this chapter, and as far as possible make its decision compatible with these provisions.

(3) The recognition of the fundamental rights set out in this chapter does not deny the existence of any other rights that are recognised or conferred by Shari'ah or by customary law or legislation to the extent that they are consistent with Shari'ah and the constitution."

#### Article 177 (International obligations)

"Treaty obligations in effect on the date that the constitution comes into force remain in effect."

### ***Constitutional law in Puntland***

The Puntland Constitution 2008 includes the following articles:

#### Article 1 (Name and purpose)

“... (2) The purpose of Puntland State is the realisation of form of state founded on consultation, democracy, equality, and social justice in conformity with the Islamic Sharia; in addition to the development of conditions for the well being of all the Puntlanders oriented to ensure a peaceful, justice and productive life for all its inhabitants and to contribute to those goals for the whole Somali people. “

#### Article 2 (Supremacy of the Law)

“(1) The Law is above every one.

(2) All State institutions and the entire population of Puntland shall be subject to the Law.”

#### Article 3 (Founding principles)

“(1) Except the power of the Almighty, all power shall be vested in the people and delegated to public officials in accordance with the Law; public officials are the servants of the people and shall exercise their public functions in accordance with the Law, doing only what the Law orders or allows them to do.

...

(3) The political system of Puntland State is based on the guiding principles of:

(a) Sharia law,

(b) People’s self-rule,

(c) good governance,

(d) consensus building,

(e) supremacy of public interest over private interest,

(f) multi-party competition for public office and territorial decentralization of the administration....”

#### Article 9 (Religion)

“... (3) The Laws and culture of the people shall be based on the Islamic Religion.

(4) Any law and any culture that are against Islam are prohibited.”

#### Article 12 (Equality of the Citizens)

“(1) All persons are equal before the Law.

(2) No person shall suffer any form of discrimination based on colour, religion, birth, nationality, property, beliefs, political affiliation, language or race....”

#### Article 18 (The right to life and the protection of the body)

“(1) Every person has a right to his/her life, save for capital punishment imposed in accordance with the Law.

(2) Every person shall have a right to protection of his/her body and self esteem.

(3) Violations of the individual right to life and protection such as massacre, torture, detention, and execution without trial are prohibited.”

#### Article 19 (Personal liberty)

“(1) No person shall be deprived of his/her personal liberty; any restriction by the public authorities to this right must be explicitly established by the Law....”

#### Article 26 (Offence and punishment)

“... (3) No one can be subjected to a punishment that is not decreed by a competent court of Law.”

#### Article 28 (The rights of the convicted person)

“(1) Any person sentenced by a court of Law shall have the right to protection, security and dignity as a human being....”

#### Article 31 (The rights of children)

“(1) A minor is any individual below the age of fifteen (15) years.

(2) A minor has a right to life, name, nationality, education and support....”

Article 87 provides for an independent judiciary which “shall be subject only to Sharia Law, the Constitution and the Laws” (para. 3). It also provides for military tribunals to have jurisdiction over offences committed by military personnel (para. 4).

Section 4 addresses the defence of human rights, and article 118 specifies the powers and responsibilities of the Human Rights Defender, including “(2) To promote awareness and respect, among the population and the authorities, of the human rights consecrated in the Constitution, the Laws of the country, and stated in the international protocols and conventions of Human Rights” and “(8) To campaign for the reform of Laws or administrative practices in order to increase the observance and respect for human rights”.

### ***Constitutional law in Somaliland***

A number of provisions in the Somaliland Constitution 2001 are relevant to inhuman sentencing.

#### Article 24 (The Right to Life, Security of the Person, Respect for Reputation and Crimes against Human Rights)

“(1) Human life is the gift of Allah and is beyond price. Every person has the right to life, and shall only be deprived of life if convicted in a court of an offence in which the sentence laid down by law is death.

(2) Every person shall have the right to security of his person. Physical punishment and any other injury to the person is prohibited.

(3) Every person shall have the right to have his dignity, reputation and private life respected.

(4) Crimes against human rights such as torture, extra-judicial killings, mutilation and other similar acts shall have no limitation periods.”

#### Article 5 (Religion)

“... (2) The laws of the nation shall be grounded on and shall not be contrary to Islamic Sharia....”

#### Article 128 (The Basis and the Supremacy of the Constitution)

“(1) The Constitution shall be based on Islamic principles.

(2) The Constitution shall be the supreme law of the land, and any law which does not conform to it shall be null and void.”

#### Article 130 (The Implementation of the Constitution)

“... (5) All the laws which were current and which did not conflict with the Islamic Sharia, individual rights and fundamental freedoms shall remain in force in the country of the Republic of Somaliland until the promulgation of laws which are in accord with the Constitution of the Republic of Somaliland. At the same time, laws which conform to the Constitution shall be prepared, and each such law shall be presented within minimum time scales set by the House....”

### ***International human rights treaties***

Somalia has ratified or acceded to the following international treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 1990)
- International Covenant on Economic, Social and Cultural Rights (in 1990)
- International Covenant on Civil and Political Rights (in 1990)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1975)

Somalia has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities or the Second Optional protocol on the ICCPR aiming at the abolition of the death penalty. It has signed but not ratified the Convention on the Rights of the Child (in 2002) and the African Charter on the Rights and Welfare of the Child (in 1991). As at March 2010, the process of ratifying the Convention on the Rights of the Child was reportedly under way.<sup>36</sup> Authorities in Somaliland and Puntland have declared their intention to incorporate the principles of the CRC in their legal systems.<sup>37</sup>

Somalia is a party to the complaints/communications mechanisms associated with the following instruments:

- International Covenant on Civil and Political Rights
- African Charter on Human and Peoples' Rights

### ***Status of treaties***

The Transitional Federal Charter of the Somali Republic states in article 14:

“(1) The Somali Republic shall recognize and enforce all international human rights conventions and treaties to which the Republic is a party...”

In Puntland, the Constitution states only that the human rights defender must promote awareness and respect for international treaties (article 118, see above).

In Somaliland, the Constitution states in article 21:

“(1) The legislative, executive and judicial branches of the state and the local government of the regions and the districts of the Republic of Somaliland, of all levels, shall be bound by the provisions of this Part.

(2) The articles which relate to fundamental rights and freedoms shall be interpreted in a manner consistent with the international conventions on human rights and also with the international laws referred to in this Constitution.”

## **Recommendations from human rights treaty monitoring bodies**

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<sup>36</sup> <sup>1</sup> A/HRC/13/65, 23 March 2010, *Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*, paras. 10 and 88; <http://unchildrights.blogspot.com/2010/05/childrens-rights-in-somalia.html>, accessed 21 February 2011

<sup>37</sup> <sup>1</sup> <http://unchildrights.blogspot.com/2010/05/childrens-rights-in-somalia.html>, accessed 21 February 2011

Somalia does not appear to have submitted reports to any of the human rights bodies monitoring the treaties it has ratified, with the exception of a report submitted to CERD many years ago in response to which no recommendations were made.

### **Universal Periodic Review**

Somalia is due to be examined under the Universal Periodic Review process in 2011.