



The Republic of Somaliland



Somaliland Litigants' Charter

Criminal Justice
Compendium for
Somaliland



UNODC

United Nations Office on Drugs and Crime

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Criminal Justice Compendium for Somaliland

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Litigants' Charter Team

Research, writing and editing:

Violet Mavisi (Consultant).

ROEA and Somaliland CJP personnel who provided support to the Litigants' Charter: Rebecca Nyandiwa, Mohamoud Hassan and Abdifatah Mohammed.

Translation support:

Tubali Ltd.

Layout and design:

400 Communications Ltd.

Supervision

Loide Lungameni (UNODC ROEA Representative), Matteo Pasquali (UNODC ROEA Head of the CJP), Simon Charters (UNODC Programme Coordinator CJP Somaliland).

Experts consulted in the preparation of the Litigants' Charter

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Table of Contents

1. Introduction	8	3. Conduct of Criminal Proceedings	31
1.1 Why a Litigants' Charter?	9	3.1 Criminal procedure	32
1.2 Analysis of the criminal justice system in Somaliland	10	3.1.1 Complaint	32
1.3 What to expect from the Judiciary	15	3.1.2 The Role of the Police	36
2. The Court Structure	17	3.1.3 Investigation	37
2.1 The structure and organization of the Judiciary	18	3.1.4 Arrest	39
2.1.1 District Courts	19	3.1.5 Confirmation hearings	44
2.1.2 Regional Courts	21	3.1.6 Accused Person	46
2.1.3 The Court of Appeal	24	3.1.7 Bail	47
2.1.4 The Supreme Court	26	3.1.8 Charge	49
2.1.5 Military Penal Appellate Section	29	3.1.9 Duties of counsel towards the accused person	51
2.1.6 Tax Appellate Section	29	3.1.10 Duration of accused person in custody before trial	53
2.1.7 Taxation Section	29	3.1.11 Prosecution	53
2.1.8 Juvenile Section	29	3.1.12 Disqualification of a judge	56
2.2 The Court Structure – Flow Diagram	30	3.1.13 Hearings	56
		3.1.14 Consequences of a plea of guilty	59
		3.1.15 Consequences of a plea of not guilty	61
		3.1.16 Judgement	62
		3.1.17 Appeals	65
		3.1.18 The time limit for the commencement of criminal proceedings	66

4. Juvenile Justice	67	5. Gender And Human Rights	82
4.1 Juvenile proceedings	68	5.1 Sexual and Gender-Based Violence	83
4.1.1 Purpose of the law on children	69	5.2 Types of sexual and gender based violence	84
4.1.2 Criminal proceedings against a juvenile	71	5.2.1 Sexual violence	85
4.1.3 Arrest of a child	73	5.3 The right to report	86
4.2 Children’s Court	74	5.4 Customary dispute resolution for rape and other gender based violence cases	87
4.2.1 Bail	76	6. Legal Aid In Somaliland	88
4.2.2 Preliminary hearing	77	6.1 Provision of legal aid in Somaliland	90
4.2.3 The time limit for handling trials involving a child	78		
4.3 Diversion	78		
4.4 Sentencing a child	80		
4.5 Appeal	81		

1. Introduction

I

1. Introduction

1.1 Why a Litigants' Charter?

There is a need to enhance access to justice in Somaliland. Somaliland has a pluralist system of justice that includes the formal justice system, the customary system and the Sharia'h law system. According to UNODC research carried out in 2011¹, the Somaliland pluralist system affects the most vulnerable members of society the hardest, particularly women, children and Internally Displaced Persons (IDPs). For instance, the customary law system - which is preferred by the majority - relies on the wisdom of elders who are considered by the people (and the elders themselves) to be the best suited in dealing with a large number of cases, both in the criminal and civil law realms. However, it is often the case that the outcome of this system ends up marginalising the more vulnerable members of society.



This document, the Litigants' Charter, is based on the formal criminal justice system of Somaliland

¹ UNODC, 'An Analysis of the Criminal Justice Sector in Somaliland' (Vienna, 2011).

UNODC's 2011 report, *'An Analysis of the Criminal Justice Sector in Somaliland'*, also notes that the formal system of justice, whose laws date back to the colonial era, is not widely known or acknowledged by the general populace. There is a need to raise awareness of this system and to redress gross inequalities. Similarly, authorities ought to ensure the provision of recourse through the formal legal system. The report acknowledged that awareness raising must be given a priority focus in efforts to reform the justice sector.

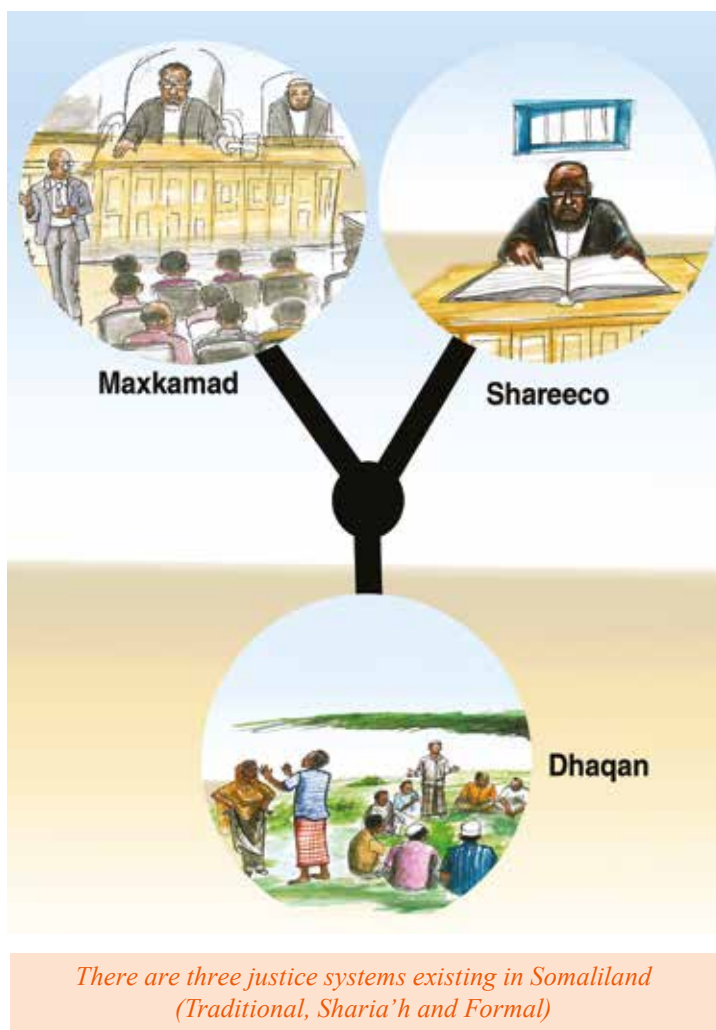
In the course of gathering information to write the Litigants' Charter, it was evident that many institutions do engage with legal aid. However, one of the gaps noted is the lack of any literature that can be used by the different sectors to educate the populace. Each of the organisations consulted use lawyers and paralegals, but one could not evaluate the standard documents used because they do not exist.²

While acknowledging that there are numerous systems operating in Somaliland, this Litigants' Charter is based on the formal justice system. It is intended to make the general population aware of how the justice system operates in the country. The Charter provides information on the minimum standards for services to be offered to all who engage with the justice system in Somaliland. It consolidates the rights and obligations relating to services applicable to the victims and the offenders in a criminal justice procedure, but does not touch on the civil process of law.

1.2 Analysis of the criminal justice system in Somaliland

Somaliland has a population of about 3.5 million people. The culture is based on clan identity. The legal system is pluralist, having more than one legal system working alongside others. The formal justice system, the subject of this Charter, functions alongside the informal justice systems of customary law and Sharia'h law.³

2 Organisations which deliver or administer legal aid include the University of Hargeisa Legal Aid Clinic, the University of Amoud Legal Aid Clinic, the Ministry of Justice and its Legal Aid Department, the Somaliland Lawyers' Association (SOLLA), and the Somaliland Women's Lawyers Association (SWLA).



- 3 UNDOC (2011), p.17. This was also evident in visits to the Court and to the Office of the Attorney General. Cases filed and finalised in court can still go through the customary process. Customary agreements are filed in court and can be accepted by the court even in criminal matters.

The general population does not, however, have sufficient knowledge and understanding of the formal justice system. The use of various justice systems leads to the formal justice system not being implemented systematically, and it therefore lacks public confidence. Some of the reasons for the formal justice system lacking in public confidence include:

- Lack of knowledge of the written laws;
- Lack of awareness about the formal justice system;
- Lack of confidence in the various agencies involved in the system. For example, judges hearing cases in the formal justice system who come from the same clan as one of the parties to a case may not be fully trusted;
- Lack of knowledge of the system and the offices involved;
- In comparison to the customary law system, the formal justice process is thought to be prone to delays;
- There are few trained legal officers to serve the high number of citizens who may be in need of their services (indeed many of the rural areas have no or few lawyers);
- The formal justice system may be expensive and cumbersome in comparison to other options (and in addition, the procedure to go to court may not be easily understood), and
- Lack of public confidence in the integrity and work of the police.



There is a lack of public confidence in the integrity and work of the police.

Additionally, the customary legal system has several advantages when compared to the formal justice system, and may therefore be more readily acceptable to the community. Such advantages include:

- Level of confidence that people have in the customary legal system;
- Community participation in choosing the judges;
- The customary legal system is seen to be less expensive and easily accessible to the community; this mechanism is available in every village;
- It resolves the cases in a speedy and efficient manner;
- There is more compliance with the process and the judgments can be easily enforced, and
- The customary legal system is flexible as there are avenues of compromise.

Though acceptable to many, the customary dispute resolution mechanism has disadvantages, which include:

- It is discriminative against some vulnerable members of society, like women. For instance, women do not sit as members of the adjudication process;
- The applicable norms do not necessarily adhere to international human rights standards and many of the elders' verdicts may contravene these standards;
- The modes of punishment usually meted out on female convicts are punitive, and do not conform to the Somaliland Constitution or human rights standards. For example, a woman who is a victim of rape may be made to marry the person who violated her, and
- The system does not follow the laws of the land, especially in dealing with crimes and individual punishment. In certain instances, punishment may be born by an entire clan.

Haweenku door kuma laha garsoorka dhaqanka



Women do not traditionally participate in the decision-making of the Xeer.

Somaliland is therefore at a crossroads. Since the nation's population is both growing and incorporating other civilisations, there is a need to gravitate towards the formal justice system. It is therefore important to develop public confidence and trust in the formal criminal justice system. This would restore confidence in rule of law and the formal justice system. Public confidence in the formal justice system can only be achieved once citizens are aware of it.

1.3 What to expect from the Judiciary

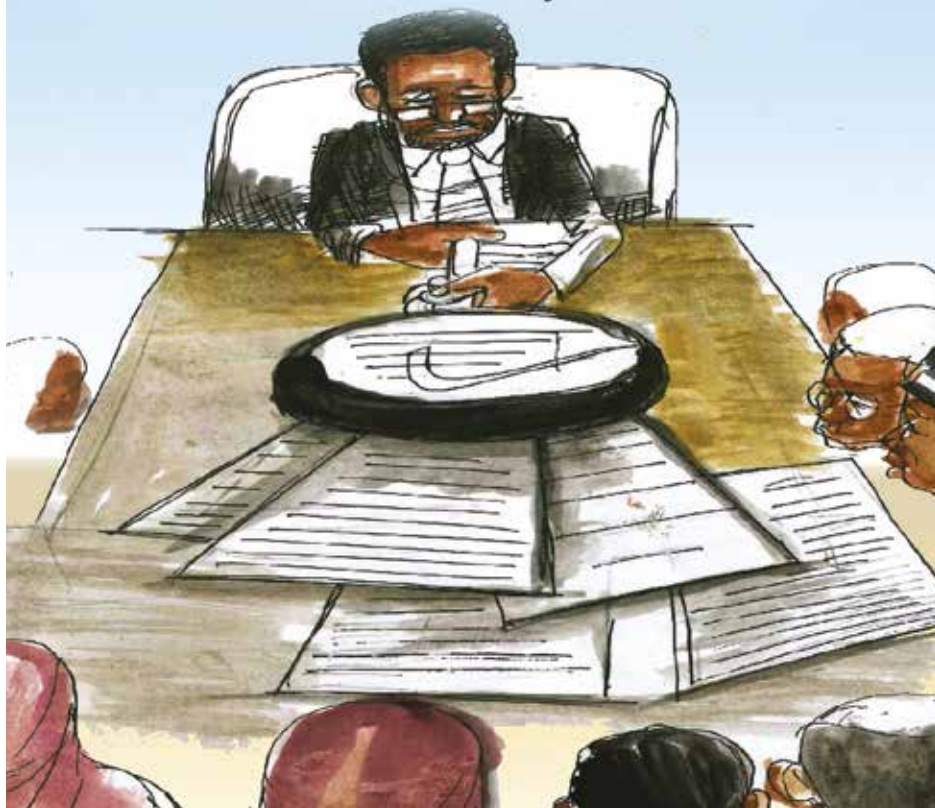
The judicial branch of government has specific functions. It is the institution that is given, among others, the mandate to:

- Resolve conflicts between individuals, as well as between individuals and the State, according to the law;
- Interpret the laws of the land and ensure they are not in conflict with the Constitution;
- Punish anyone who breaches any law, and
- Protect individual rights and freedoms against violations.

The Judiciary is a public place. The court building is open for business from Saturday to Thursday, except on public holidays. The Judiciary has several categories of officer including the judges themselves, the clerks of the courts and administrators.

Cases in court are determined by independent, non-partisan, accountable and impartial judicial officers who are known as judges. There are other officers who, though not part of the judiciary, do conduct their activities in court and one will interact with them. They include police officers, prison officers, prosecutors, assessors, witnesses and probation officers. It is therefore important to understand the roles of the various officers and each one's rights and obligations.

**Garsooruhu waa inuu fasiraa ama
sharaxaa sharciyada**



Judges interpret the laws of the land.

2. The Court Structure

III

2. The Court Structure

2.1 The structure and organization of the Judiciary

The court system of the Republic of Somaliland consists of:

- Lower courts, which include Regional Courts and District Courts;
- Appeal courts based in each region;⁴
- The Supreme Court (which functions as a constitutional court and High Court), and
- Courts of the National Armed Forces.⁵

**Maxkamadaha dalku waxay ka kooban yihiin
Maxkamad Degmo, Gobol, Racfaan, Maxkamadda Sare
iyo Maxkamadda Ciidanka**



*The Somaliland Courts consist of the District,
Regional, Supreme and Military Courts.*

⁴ Constitution of the Republic of Somaliland, Article 102.

⁵ Constitution of the Republic of Somaliland, Article 100.

This Charter is not concerned with the Courts of the National Armed Forces because they are not involved in adjudicating day-to-day justice issues that affect the ordinary citizen.

2.1.1 District Courts⁶

These tribunals are found in every district headquarters and have jurisdiction over the whole territory of the district. Each District Court has a civil and a criminal section. Cases in these courts are heard by a single judge.

Civil section of the District Court

In the civil section of the District Courts, the following kinds of cases are adjudicated:

- Claims based on Sharia'h law which are primarily matters relating to family and succession;
- Claims based on customary law, and
- Civil cases where the value of the subject matter does not exceed 3,000,000 Somali Shillings (So.Sh).

Criminal Section of the District Court

As a criminal tribunal, the District Court presides over criminal cases whose punishment under the Penal Code is imprisonment for a period not exceeding three years, or a fine not exceeding 3 million So.Sh, or both. Such cases under the Penal Code include:

- Giving false statement as to one's identity;⁷
- Fraudulent raising or lowering of prices in the public market;⁸

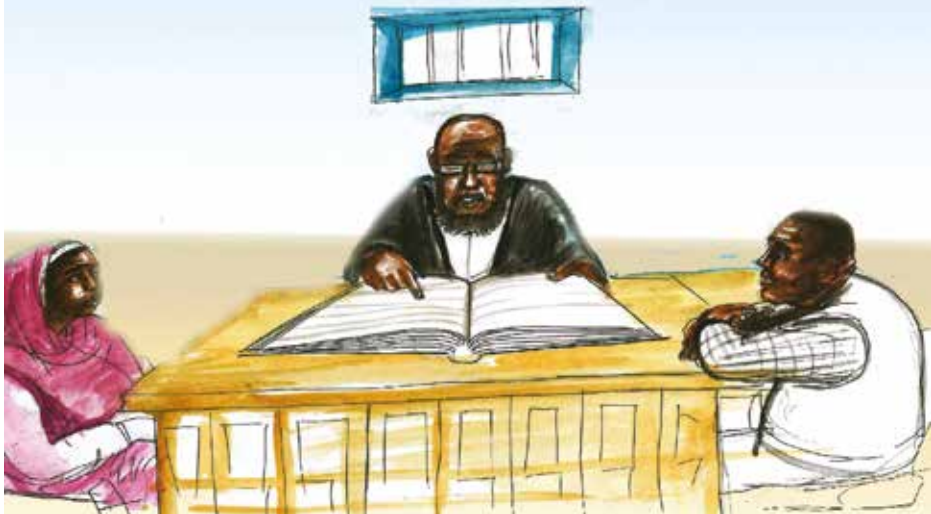
6 Organisation of the Judiciary Act, Article 2.

7 Penal Code of Somaliland, Article 385 (punishable by up to one year imprisonment or a fine of So.Sh. 5,000).

8 Penal Code of Somaliland, Article 389 (punishable by up to three years imprisonment or a fine of So.Sh. 3000).

- Sale of non-genuine food products as genuine;⁹
- Assault wherein no physical or mental illness results there;¹⁰
- Affray;¹¹
- Among others.

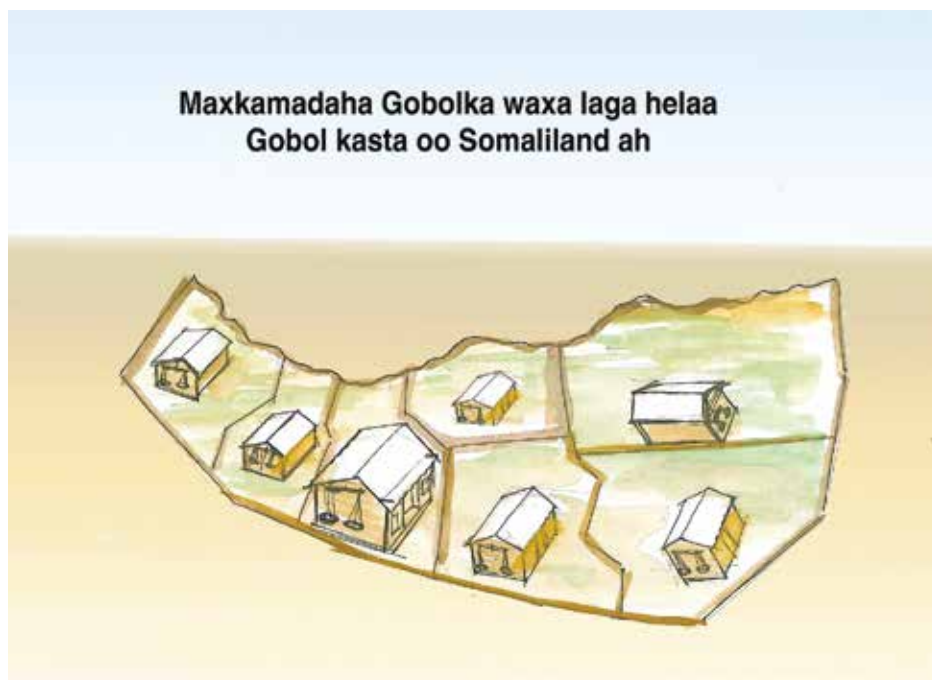
**Maxkamadda Degmadu waxay dhegaysataa
dacwadaha ciqaabta ah ee ganaaxoodu ka
hooseeyo 3 milyan oo Shilinka Somaliland ah**



*District courts can hear criminal cases that
don't exceed a fine of 3 million SI.Sh.*

- 9 Penal Code of Somaliland, Article 396 (punishable by up to six months imprisonment or a fine of So.Sh. 10,000).
- 10 Penal Code of Somaliland, Article 439 (punishable by up six months imprisonment or fine of up to So.Sh. 3000).
- 11 Penal Code of Somaliland, Article 444 (punishable by up one year imprisonment or fine of up to So.Sh. 1000).

2.1.2 Regional Courts¹²



Regional courts are found in every region of Somaliland.

Regional Courts are found in each of the six regional headquarters of Somaliland: Hargeisa, Berbera, Burao, Erigavo, Las Anod, Gabiley and Borama. The courts have jurisdiction over the whole territory of the region. The court has two sections, the General Section and the Assize Section. The courts have power to conduct sessions or hearings anywhere within their territorial limits. All civil cases wherein the government is a party either as the plaintiff or the defendant must be filed before a Regional Court.

¹² Organisation of the Judiciary Act, Article 3.

The General Section

Disputes that fall under the jurisdiction of the General Section, and which are usually presided over by a single judge, include:

- Civil cases where the value is beyond So.Sh. 3,000;
- Civil cases that cannot be heard by District Courts;
- Civil cases in which public bodies or officers are party;
- Labour or employment claims;
- Claims arising out of local district council government elections, and
- Criminal cases which attract imprisonment of between three (3) and ten (10) years.

Assize section of the Regional Court

The Assize Section hears criminal cases that attract a higher prison sentence such as death, imprisonment for life or imprisonment of not less than ten years. Examples of such cases include:

- Bearing arms against the State;¹³
- Favouring the enemy of war;¹⁴
- Attempts to change the Constitution or form a Government by means not authorised by the Constitution;¹⁵
- Pollution of water or food,¹⁶ and
- Murder.¹⁷

13 Penal Code of Somaliland, Article 185 (life imprisonment).

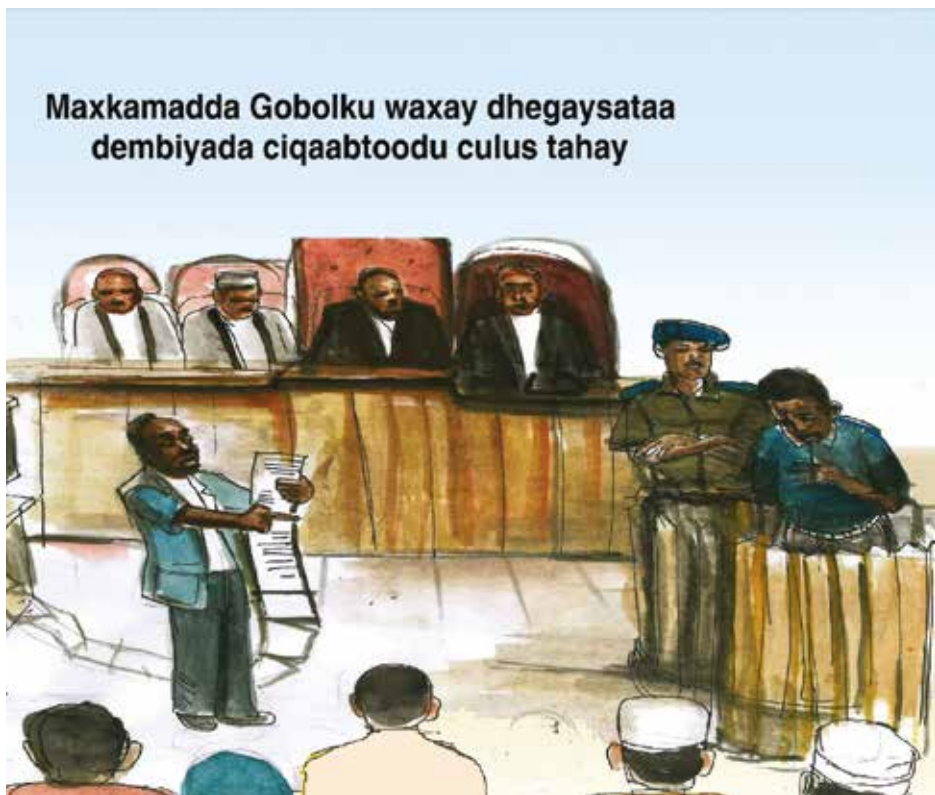
14 Penal Code of Somaliland, Article 190 (punishable by imprisonment of not less than ten).

15 Penal Code of Somaliland, Article 217 (punishable by imprisonment for life).

16 Penal Code of Somaliland, Article 335 (punishable by imprisonment of not less than 15 years).

17 Penal Code of Somaliland, Article 434 (punishable by a sentence of death).

Maxkamadda Gobolku waxay dhegaysataa dembiyada ciqaabtoodu culus tahay



The Regional Court hears criminal cases which attract a higher prison sentence

Cases in the Assize Section are usually heard by the President of the Regional Court, a Judge of the Regional Court, and two assessors. The assessors make determinations on the questions of fact only, while judges resolve questions of law and pass appropriate punishment. The assessors help in looking at the facts and determining whether the evidence is sufficient. The judges, on the other hand, determine whether the case has been proved in accordance with the law before passing the sentence.

2.1.3 The Court of Appeal¹⁸

The Court of Appeal has jurisdiction over the whole territory of the region. The Court is found in every regional headquarters of the country. The President of the Court of Appeal in each region acts as the head of the judiciary in that jurisdiction.¹⁹ The Court deals with appeals from District and Regional Courts. Each Court of Appeal is divided into the following sections:

- The General Appellate Section;
- The Assize Appellate Section;
- The Military Penal Appellate Section, and
- The Taxation Section.

Maxkamadaha Rafcaanku waxay awood u leeyhiin dacwadaha ka yimaada Maxkamadda Gobolka iyo Degmada



The Appeal Courts deal with appeals from the District and Regional Courts.

¹⁸ The Organisation of Judiciary Act, Article 4.

¹⁹ The Organisation of Judiciary Act, Article 11.

The General Appellate Section

The General Appellate Section entertains appeals against judgments of the criminal section of the District Courts and the General Section of the Regional Courts. The Court of Appeal's General Appellate Section also has jurisdiction over appeals on orders made to terminate proceedings. Cases in the General Appellate Section are heard by a single judge.

The Assize Appellate Section

The Assize Appellate Section consists of the President of the Court of Appeal, a Judge of the Court of Appeal, and three assessors. The Court of Appeal's Assize Appellate Section hears appeals against judgements of the Assize Section of the Regional Courts, and any order given by such Assize Section to terminate proceedings. The assessors help the court in making decisions on the question of fact only. The judges, on the other hand, make decisions on the question of law and also impose the appropriate punishment.

Assessors are members of the public appointed by the Court. They sit with the judges to hear cases and make a determination on the facts of that case. This means they only deal with the evidence given but cannot make any decision on any issue of law brought before the court. Assessors are appointed from people who:

- Are citizens of full age (i.e. adults of age 18 and above);
- Are resident within the Republic of Somaliland;
- Are of good conduct, and
- Have secondary school education.

Garsoore dadweyne waa xubin ka mid ah bulshada oo Maxkamaddu magacawday



Assessors are members from the community (citizens) appointed by the courts

2.1.4 The Supreme Court²⁰

The Supreme Court is the highest tribunal in the land. It also acts as a constitutional court and as a High Court. It is established under Article 101 of the Constitution. The Supreme Court is made up of the Chairman (the Chief Justice), and at least four other judges. This Court is situated in Hargeisa where it holds its sessions.

²⁰ Constitution of the Republic of Somaliland, Article 101, and Organisation of the Judiciary Act, Article 5.

Jurisdiction of the Supreme Court

The Supreme Court, sitting as a supreme court, handles the following matters:

- All appeals from the judgments of other courts;
- Petitions against final decisions of the public administration;
- Petitions relating to the rendering of accounts by officers handling public funds;
- Petitions for revision of a judgment in a criminal case;
- Petitions on the validity of elections of deputies to the National Assembly;²¹
- Controversies relating to the conflict of jurisdiction or competencies among judicial organs, and
- Review of its own decisions.²²

Supreme Court as a Constitutional Court

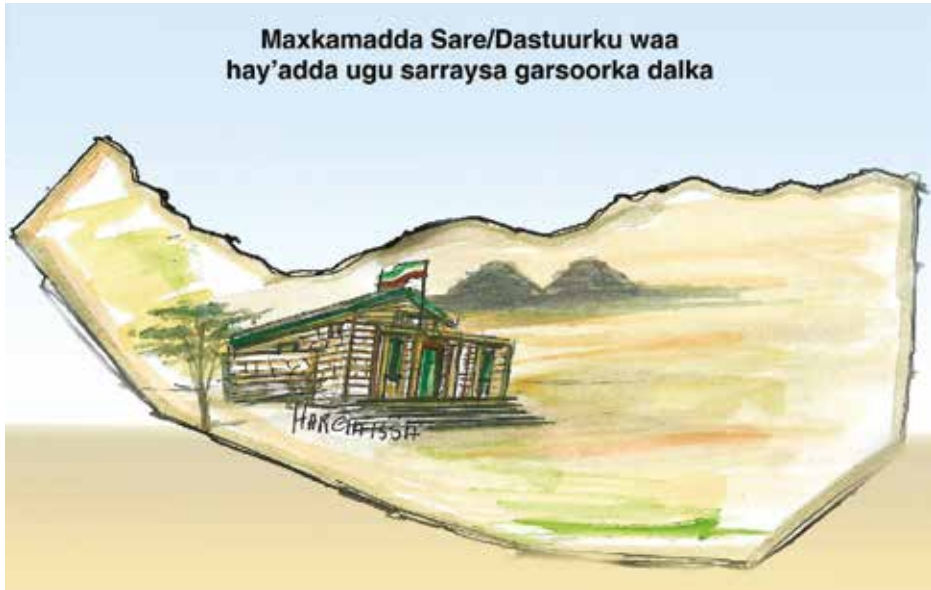
The Supreme Court also acts as the Constitutional Court.²³ Sitting as a Constitutional Court, it must be composed of all the judges of the Supreme Court. In this capacity, the Supreme Court adjudicates on:

- Cases relating to the constitutionality of the acts and decisions of the Government and the Legislature;
- The interpretation of the provisions of the Constitution and the laws of the land when these provisions are the subject of controversy, and
- Disputes where decisions from other Courts are challenged as being contrary to the Constitution.

21 Constitution of the Republic of Somaliland, Article 50.

22 Criminal Procedure Code, Article, 238, and Civil Procedure Code, Article 266.

23 Constitution of the Republic of Somaliland, Article 6.



The Supreme Court is the highest court in Somaliland.

Supreme Court as a High Court

The Supreme Court can also sit as a High Court with original jurisdiction, which means that it can hear any case brought before it, whether this be criminal or civil. This Court sits as a special court dealing with the question of the removal of ministers from offices (also known as the impeachment of ministers), the removal of members of parliament and other specified public officers. However, this Court does not deal with the impeachment of the President and the Vice President of Somaliland. As a special tribunal, the Court sits with an additional four representatives elected by the two houses of parliament.²⁴

²⁴ Constitution of the Republic of Somaliland, Article 7.

2.1.5 Military Penal Appellate Section

This Court consists of the President of the Court of Appeal and four military assessors. The Court hears appeals against judgments of the Military Penal Section of the Regional Court.

2.1.6 Tax Appellate Section

The Tax Appellate Section hears appeals in tax matters.

2.1.7 Taxation Section

The Taxation Section handles all taxation matters.

2.1.8 Juvenile Section

The Juvenile Section has jurisdiction to determine matters relating to juveniles.

2.2 The Court Structure – Flow Diagram

SUPREME COURT

The Court sits in Hargeisa. Petitions are heard by a bench of 3 judges. Petitions for elections or most serious matters are heard by a full bench of five judges. Members of the Court are appointed by the President of Somaliland. The Court has five divisions: civil and labour, personal statute, constitutional, administrative and criminal.

APPEALS COURTS

General Section	Assize Section
Has criminal and civil jurisdiction over Appeals from the Regional Courts. The cases are heard by a single judge.	Has jurisdiction over appeals lodged by the Assize sections of the Regional Courts which are heard by the President of the Court, a judge and three lay assessors.

REGIONAL COURTS

General Section	Assize Section
Hears cases where the sentence is between 3 and 10 years imprisonment.	Hears cases where the sentence exceeds ten years or includes the death sentence. Cases are heard by the President of the Court and two lay assessors.

DISTRICT COURTS

Civil Section	Criminal Section	Juvenile Section
Hears claims on Sharia'h law, customary law, and civil cases where the value of the subject matter does not exceed So.Sh. 3,000.	Hears cases where the sentence is a period not exceeding three years, or a fine not exceeding So.Sh. 3 million, or both.	The Juvenile Section has jurisdiction to determine matters relating to juveniles.

3. Conduct of Criminal Proceedings



3. Conduct of Criminal Proceedings

3.1 Criminal procedure

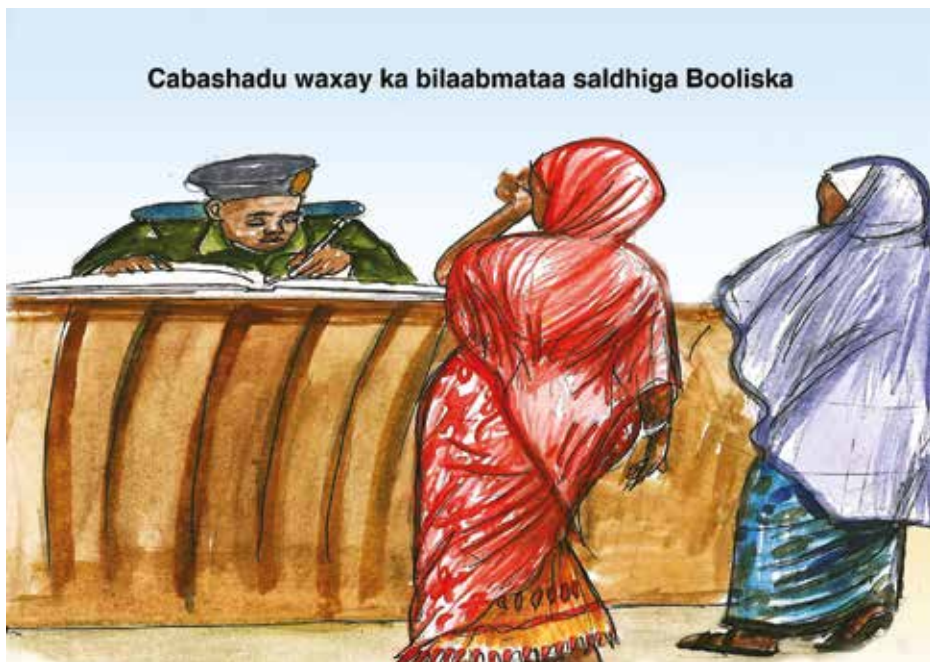
Criminal procedure regulates the process of criminal proceedings in all criminal cases. This process begins when a complainant goes to make his/her complaint to the police about a criminal act perpetrated against him/her, through until the hearing and determination of the case. Criminal procedure therefore includes the following items:

- Complaint
 - Arrest
- Arrest Generally
- Rights of an arrested person
 - Investigation
- Rights of the victim
- Rights of witnesses
 - Bail
 - Prosecution
- Charge
- Plea
- Trial
- Conviction and sentencing
 - Appeal

3.1.1 Complaint

When a crime is committed against a person, that person becomes a victim of crime. It is important therefore that a victim understands the entire justice processes.

Cabashadu waxay ka bilaabmataa saldhiga Booliska



The criminal process begins when a complainant goes to the police.

Complaints, or reports of the commission of any crime, can be made to a judge, the Office of the Attorney General, or to a police officer. Such report can be made by a person who has been injured by the commission of the offence, or by anyone who has knowledge of the commission of the offence. The person injured by the commission of an offence is known as the injured party. Such an injured person has the right to report the offence to the police and the police have a duty to take appropriate action that includes investigating the case, arresting the accused person and ensuring that the matter is taken to the prosecutor. The injured party also has the right to apply to the court for compensation (damages) from the accused person in a separate civil case.

**Dacwad waxa loo gudbin karaa Xeer Ilaaliye,
Sarkaal Boolis ama Garsoore**

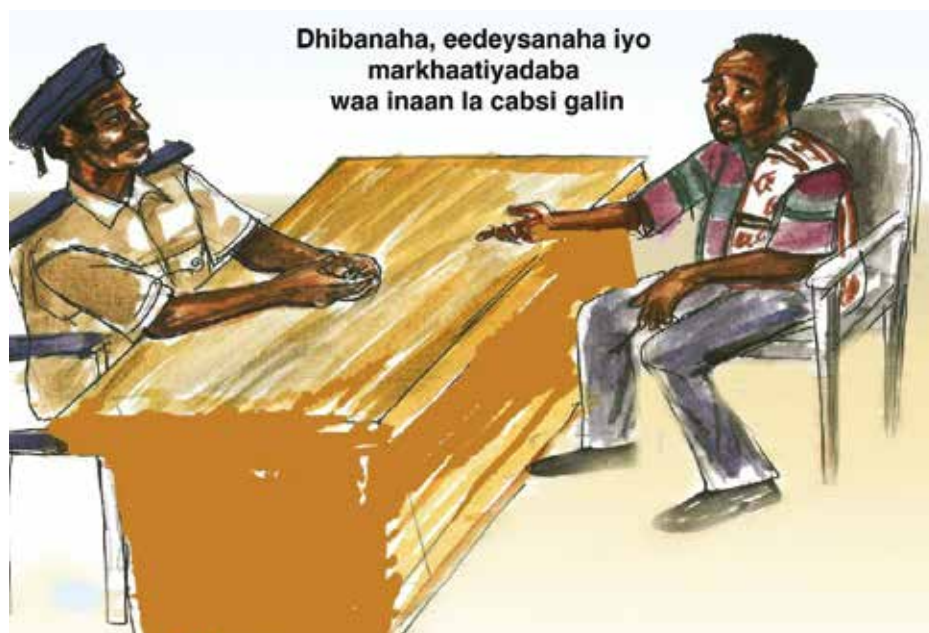


*Complaints or reports of any crime can be made to a judge,
the Office of the Attorney General, or to a police officer.*

A victim of crime should expect, at minimum, the following from any public official they deal with regarding a crime committed against them:

- To be treated with fairness, respect, dignity and privacy, including to be attended to promptly and courteously, respectfully and with dignity by all service providers (for example the police, prosecutors and judges);
- For the public official to volunteer information such as the victim's entitlements to provide any information regarding the crime, to participate in the proceedings, to be informed about the case, and to be informed about the roles of the various service providers;

- To be protected from any intimidation, harassment and abuse by the offenders, and
- To be informed of one's rights.

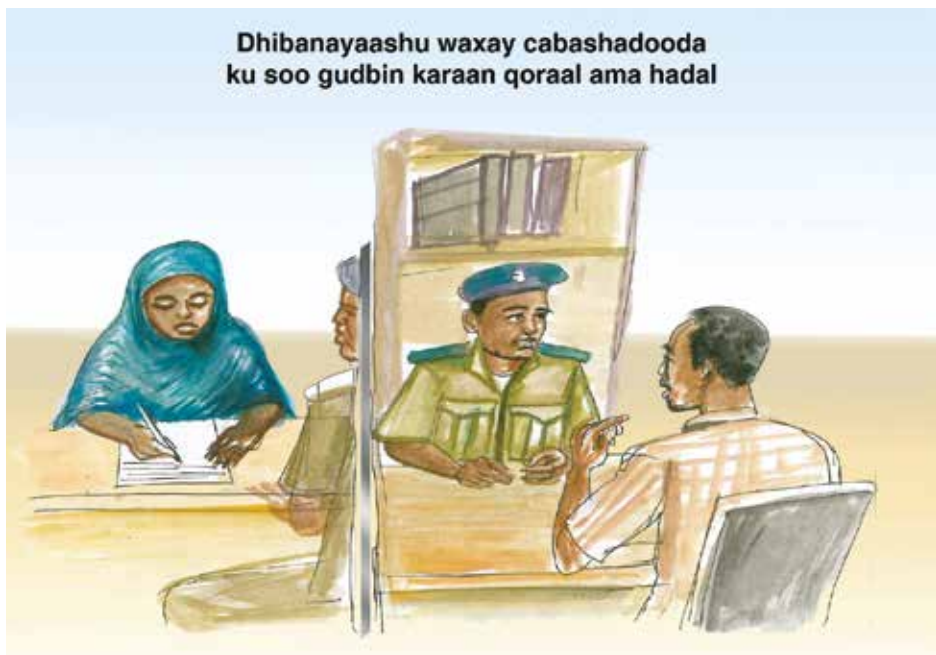


Victims, witnesses and suspects of crime should be protected from fear.

A person injured through the commission of an offence may not complain if they have:

- Expressly or tacitly renounced their right to complain;
- Instituted civil proceedings for restitution or recovery of damages, or
- Reached a settlement of the damage arising from the commission of the offence.

Victims of crime can make their complaints either in writing or orally. Where the complaint is in writing, the complainant must sign it. Where the complaint is made orally, then the authority receiving it must record it, read it over to the complainant who must then sign the relevant documents.



Victims of crime can make their complaints either in writing or orally.

3.1.2 The Role of the Police

The Somaliland Police Charter is clear about the role of the police in society and in the criminal justice system. The police are the backbone of internal security and their role is essentially to:

-
- Preserve peace and security;
 - Uphold and enforce national laws;
 - Prevent, detect and investigate crime;
 - Bring offenders to justice, and
 - Safeguard international visitors.

In carrying out these functions, police officers are expected to respect democracy and the rights of all people.

3.1.3 Investigation

Investigation is a process of finding out the truth or otherwise of any complaint that is brought to the police by collecting evidence surrounding the case. Investigations are usually carried out by the police who receive the complaint. The aim of investigations is to:

- Document and compile a summary of all the evidence collected;
- Sort the material into victim and witness evidence statements, plus supporting exhibits, by;
 - Identifying and interviewing key witnesses
 - Identifying further victims
 - Identifying potential crime scenes
 - Identifying other locations that need to be searched for evidence, and
 - Searching and arresting suspects.

**Boolisku wuxuu sameeyaa baadhitaan
ku saabsan dacwadaha loo soo gudbiyo**



The police role is essentially to prevent, detect and investigate crime.

A police officer who receives a complaint must, of necessity, investigate the complaint. The police officer is expected to notify the Attorney General of the commission of the offence. The police will also conduct the investigation into the alleged offence by interviewing those who witnessed the offence including the injured party and take down their statements. The police will also interview the accused person and take his/her statements. The statements taken by the police shall be in writing and compiled into a police case file.

3.1.4 Arrest

‘Arrest’ means the taking into custody of persons against whom a complaint has been made. A person can be arrested with or without a warrant. While it is generally considered that the work of arresting an offender is that of the police, a judge, the Attorney General and his deputies can also arrest one without a warrant. A citizen too can arrest a person without a warrant. However, a citizen who arrests must deliver the arrested person to a police officer immediately. The police can also arrest with a warrant.

Once a person is arrested, the police are required to notify the Office of the Attorney General and the court of the arrest. Thereafter, the necessary investigations are conducted.

**Qof muwaadin ah ayaa qaban kara qof kale
isaga oo aan haysan warqadda qabashada**



A citizen too can arrest a person without a warrant.

Arrest without a warrant

In the course of investigations the police may arrest the accused person without a warrant in the following circumstances:²⁵

- Where the person to be arrested has committed an offence where the maximum punishment is imprisonment for more than 2 years or more;²⁶
- Where a warrant of arrest cannot be obtained in time;
- Where the person to be arrested may not be found if he is not arrested immediately;
- Where a person who has been summoned to appear in court fails to provide personal details of himself together with his address, or where the officer believes the details given are false;²⁷
- Where there are grounds to believe that during the time required to obtain such an arrest warrant, material evidence may be destroyed or altered, or the wanted person may abscond;²⁸
- When a person is caught in the act of committing an offence where the offence is punishable by a maximum term of imprisonment of more than one year or more, or where the person committing the offence is on bail, or²⁹
- Where one is caught in the act of committing an offence, or is pursued immediately after the commission of the crime by the police, the injured party on any other person, or is caught with objectives or traces that shows that he committed the offence (i.e. *in flagrante delicto*³⁰).

²⁵ *Ibid*, Articles 24 and 35.

²⁶ *Ibid*, Article 38.

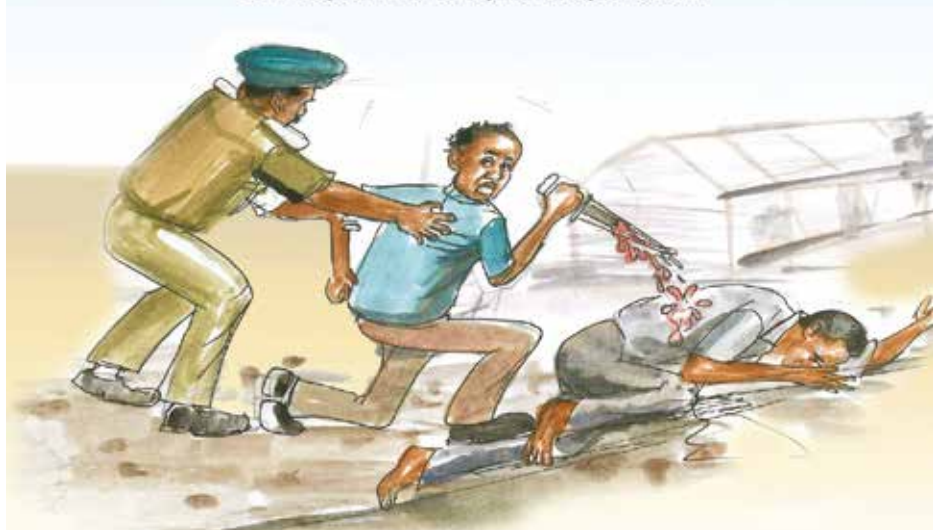
²⁷ *Ibid*, Article 50 (2).

²⁸ *Ibid*, Article 58.

²⁹ *Ibid*, Article 36.

³⁰ *Ibid*, Article 38.

**Boolisku si degdeg ah ayay u qabtaan qof
demi gacanta kula jira warqad la'aan**

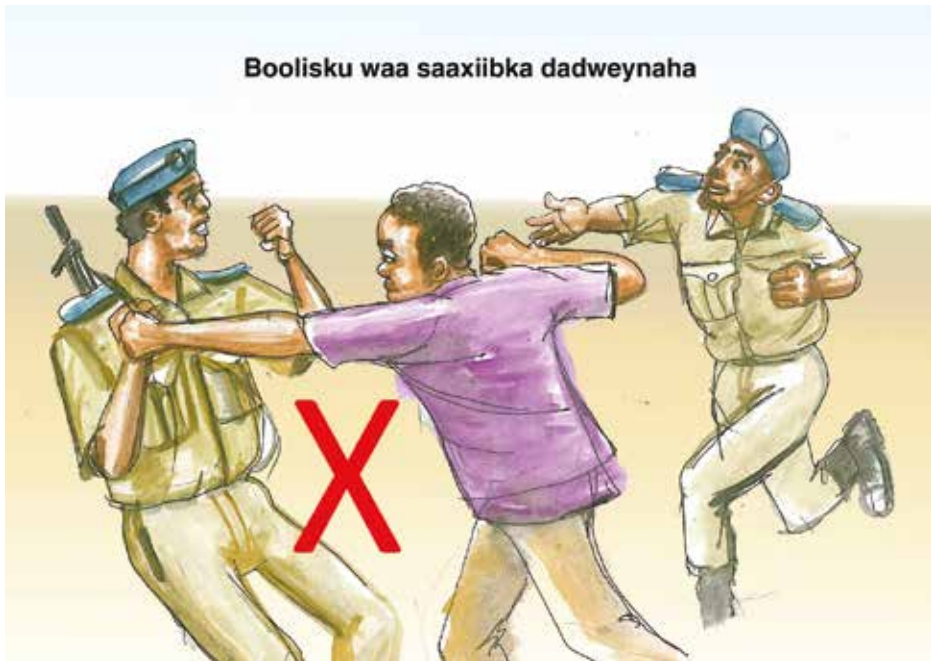


The police may, in urgent instances, arrest the accused person without a warrant where one is caught in the act of committing an offence.

The police can also search either a premises or an individual for any evidence relating to a case they are investigating. The police are, however, under a duty to inform a judge and the Office of the Attorney General in the area where the search is conducted, and must inform them of the reasons necessitating such an arrest and the results of the search. The judge is expected to confirm such an arrest within 8 days, otherwise it shall be declared null and void and the accused person will be released if held in custody.

The law demands that even where the police are to conduct an arrest without a warrant, the judge must satisfy himself that the law was followed and that there was no delay on the part of the police to take the person arrested before

the judge. There are laws and internal regulations that govern the conduct of police officials in the course of carrying out their work. Should police officials contravene these laws and regulations, they could face disciplinary action. These laws and regulations govern what the police may do when searching, arresting people or investigating cases.



The police is a friend of the public.

A police officer who violates the law with regard to arrest without a warrant could have criminal proceedings instituted against them where the violation or delay amounts to an offence. They may also face disciplinary action.³¹ Where one has been arrested without a warrant, the police have to take him/her before

³¹ *Ibid*, Article 32.

a court nearest to the place of his/her arrest and not later than 48 hours from the time of his/her arrest. A police officer who takes the arrested person to the court must prepare and submit to the court a report summary showing: the facts of the case and the reasons for the arrest; the details of the evidence obtained, and, where possible, the personal details of the person arrested, of the injured party and of any other person having information concerning the case.

*Arrest with a warrant*³²

A warrant of arrest can only be issued by a judge or a president of a competent court. A warrant is normally issued where there are grounds to believe that an offence has been committed by an accused person. It is mandatory that a warrant of arrest be issued where the offence committed attracts a maximum punishment of imprisonment of not less than 10 years. The person arrested with a warrant must be taken before a judge.

An investigator completes his/her work by presenting a file containing all the evidence to a prosecutor. The prosecution then reviews the file and the evidence in it in order to determine:

- Whether there is sufficient evidence in the file to justify a suspect being charged with a criminal offence;
- The specific crimes that should be preferred against the suspect;
- Whether it is in the public interest to prosecute the defendant for the offences in question, and
- Whether to construct a prosecution case and present it before a court of law.

Warqadda qabashada waxaa soo saara
maxkamad awood u leh



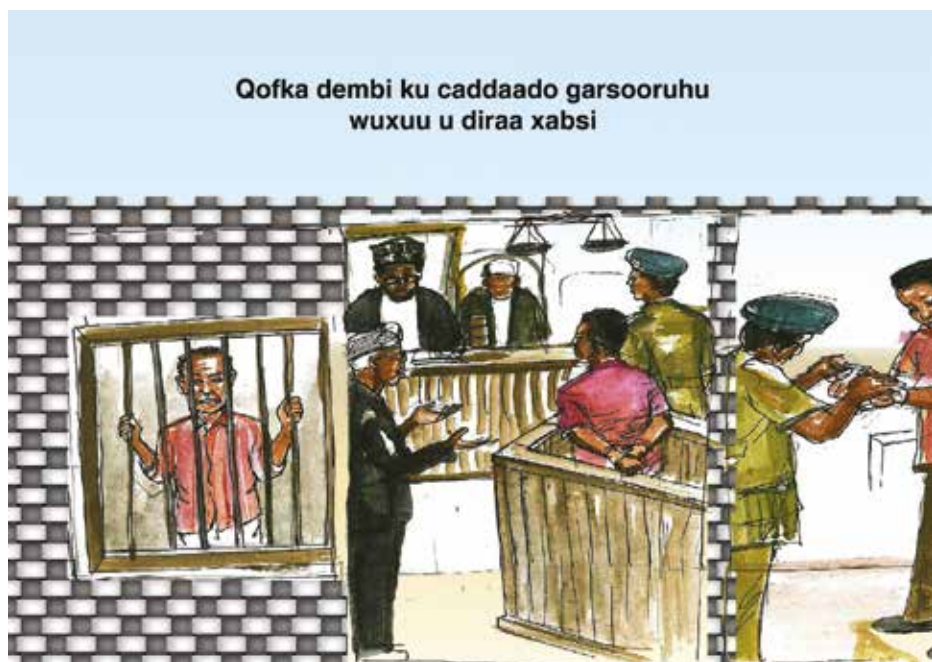
*A warrant of arrest can only be issued by a judge
or a president of a competent court.*

Where, after investigation, the Attorney General is satisfied that the evidence collected does not amount to a *prima facie* case that an offence was committed by the accused person, the Attorney General may either order more investigations, or proceed to close the case. The Attorney General may take the matter before a judge and request the court to order that the proceedings be terminated.

3.1.5 Confirmation hearings

Confirmation hearings are held to determine whether or not the accused person should be charged. Where the judge finds that there is not sufficient evidence to prove that the offence was committed by the accused or that the accused

committed the crime by reason of infirmity, or that the arrest was not carried out in accordance with the law, the judge shall order that no proceedings should be instituted against the person arrested, and that the person should be released. On the other hand, where there is sufficient evidence of commission of a crime and the arrest is found to have been carried out in accordance with the law, then the judge will confirm the arrest and remand the person in custody or the judge may release the person on bail³³.



Where the judge finds sufficient evidence to prove that the offence was committed, the judge will confirm the arrest.

3.1.6 Accused Person³⁴

An accused person is one who is served with a summons to appear in court on suspicion of having committed a crime. Such a person may have been arrested with or without a warrant under judicial authority. An accused person remains as such during all stages of the proceedings until judgment either of a conviction or an acquittal becomes final, or until a decision is made not to proceed with the case.

Rights of an arrested/accused person

The rights of an arrested or accused person include:

- To be presumed innocent until convicted;³⁵
- To be informed of the arrest and the reasons for such an arrest;³⁶
- To remain silent and not say anything regarding the case;
- To be subjected to no more restraint than is necessary to prevent escape (force can only be used where a person resists arrest, or attempts to escape);
- Not to be tortured or treated in an inhuman and/or degrading manner throughout the proceedings;
- To voluntarily make a confession before a judge. A judge who takes the confession must ensure that: it is recorded in writing in full, it is read over to the accused person, it is signed by both the accused person and the judge, and it is certified that the confession is made voluntarily;
- To be remanded or held in custody only upon orders being given by a competent court, and
- To be assisted by a lawyer. A person is to be defended by a lawyer in cases where the accused person is charged with an offence punishable with death, imprisonment for life or imprisonment for more than twenty years. In such cases, where the accused person cannot afford a lawyer, then the court shall appoint a counsel for them.

³⁴ *Ibid*, Article 39.

³⁵ *Ibid*, Article 13.

³⁶ *Ibid*, Article 29.

**Qofka xidhan waa in loola dhaqmaa
dambi laawe ilaa xukun ku dhaco**



An arrested person has the right to be presumed innocent until convicted.

3.1.7 Bail³⁷

Bail is the provisional release of a person arrested while awaiting trial, or the act of refraining from arresting an accused person against whom an arrest warrant has been issued. Such bail may be granted either by:

- A judge before whom an arrested person is brought;
- Any other competent judge up to the time of commencement of the case, or
- The president of a competent court at any time of the proceedings.³⁸

³⁷ *Ibid*, Article 59.

³⁸ *Ibid*, Article 60.

**Dammaanad waa ogolaansho lagu
sii daayo qofka la xidhay inta
uu sugayo maxkamad**



Bail includes the provisional release of a person arrested while awaiting trial.

Bail is given subject to such conditions as may be set by the awarding court. One may be given bail upon execution of a bond by the accused himself or by another person or guarantor on his behalf. Bail may not be given in cases where the issuance of a warrant of arrest is mandatory. Bail can be granted when the warrant is being executed (i.e. at the time of the arrest or at any other stage in the proceedings).

A bond consists of an amount which an accused person or guarantor deposits with the court, or is to pay if any of the conditions on the bail terms are broken. Bail can be revoked if:³⁹

³⁹ *Ibid*, Article 63.

- The accused person breaks any of the conditions of the bail terms set by the court;
- There are grounds to believe that the accused person has left or is about to leave the territory of the State;
- The amount of the bond is not sufficient because of fraud, mistake or it has subsequently become insufficient for any other reason; or
- Any of the guarantors applies to be released from the bond, has died or must leave or has left the territory of the State.

3.1.8 Charge

A charge is a concise statement of the offence that one is alleged to have committed. A charge contains particulars of an accused person, the offence committed, and the names of the injured parties. The responsibility of framing the charge against an arrested person lies with the Office of the Attorney General (AGO)⁴⁰. On receiving a report from the police on investigations that have been finalised, the AGO will initiate criminal proceedings against the accused person.



The responsibility of framing the charge against an arrested person lies with the Office of the Attorney General.

The AGO, where satisfied that there is enough evidence to charge an accused person, shall:

- Frame a charge against the accused person stating the offence committed;
- Present a charge before a competent court, and
- Request the court to fix a date for the trial.

When an accused person appears in court, the charge will be read to him/her. If the charge is different from the alleged offence for which one is arrested for, then this should be brought to the attention of the court. Once the charge is read to an accused, the accused is required to plead either guilty or not guilty to the charge. If an accused person pleads not guilty, then the accused person will have to attend court regularly until the matter is heard and determined.

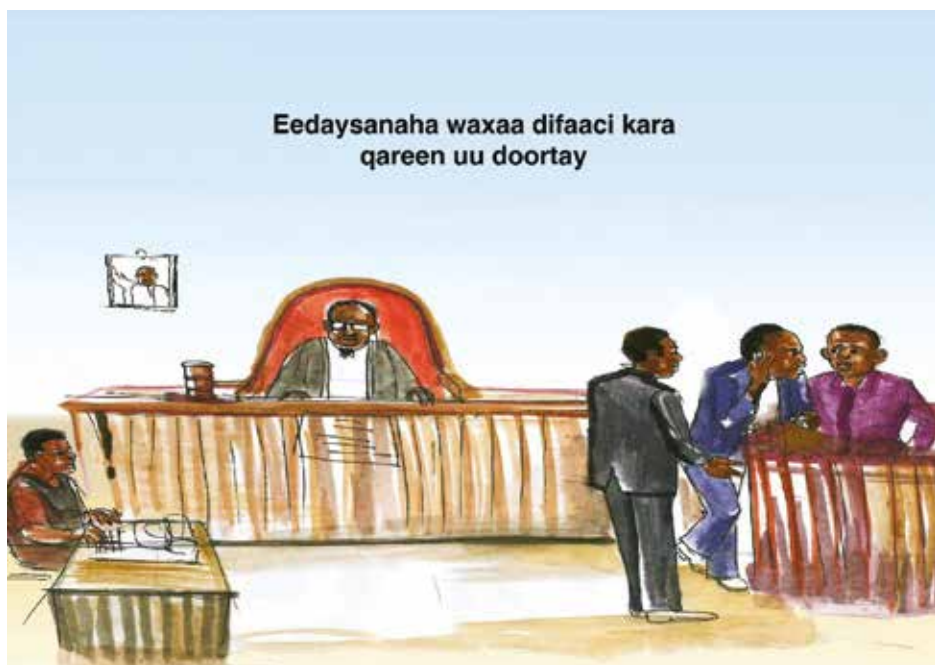
**Marka qofka loo akhriyo dacwadda
loo haysto waxaa looga baahan yahay inuu qiro inuu
dembigaas galay iyo in aanu galin**



Once the charge is read to an accused, the accused is required to plead either guilty or not guilty to the charge.

3.1.9 Duties of counsel towards the accused person⁴¹

An accused person can be defended by counsel of his/her own choice. Such a person has a right to confer with their own lawyers at each stage of the proceedings. The right of an accused person to legal counsel is highly protected. The Constitution guarantees one the right to be protected by a lawyer of their own choice. In other cases, as shown above, the law requires the court to provide them with a lawyer. A counsel who is offered by the court to an accused person cannot abandon him.



The accused has the right to be protected by a lawyer of their own choice.

41 *Ibid*, Article 16.

The counsel has the duty:

- Not to abandon his/her duties without a valid reason;
- Not to absent himself from hearings in court in such a way that the accused person is deprived of legal assistance, and
- To serve clients honestly and diligently.

Where counsel violates their duties to an accused person, they are liable to punishment. The court may order the counsel to pay a sum not exceeding So.Sh. 5,000 to the accused as compensation, or pay a sum not exceeding So.Sh. 2,000 to the State treasurer, or be suspended from the profession for a period not exceeding one year.

Qareenku waa inaanu ka maqnaan dhegaysiga dacwadaha maxkamadeed oo keenta in qofka la dacweynayaa waayo kaalmo dhinaca sharciga ah



The counsel has the duty not to absent himself from hearings in court in such a way that the accused person is deprived of legal assistance.

3.1.10 Duration of accused person in custody before trial⁴²

One can only be held in custody for:

- 90 days if the offence committed is within the jurisdiction of the Assize Section or the Military Penal Section of the Regional Courts, and the punishment would be death or life imprisonment;
- 60 days for offences that fall within the jurisdiction of the Assize Section of the Regional Court;
- 45 days where the offence is within the jurisdiction of the General Section of the Regional Court, and
- 15 days where the offence is within the jurisdiction of the Criminal Section of the District Court.

However, the Court of Appeal can extend these time frames for a period that is not more than the maximum period of custody allowed. The AGO has to make the necessary application for extension of time to the Court.

3.1.11 Prosecution

‘Prosecution’ can be defined as the process through which a person suspected of having committed a crime is brought before the court and tried for that offence, a process that protects and provides justice for a victim of a crime, and a process that expresses the rage of a community in a non-violent manner to prevent further crimes in retribution. The prosecution of a criminal case is conducted by the AGO and in other instances by police prosecutors acting as agents of the AGO. The prosecutor, therefore, is the one mandated by law with the responsibility of presenting the case in a criminal trial against an accused person.

⁴² *Ibid*, Article 47.

**Oogitaanka dacwadaha ciqaabta
ah waxa sameeya Xeer Ilaaliyaha
Guud, ku xigeenadiisa iyo wakillada**



The prosecution of a criminal case is conducted by the Attorney General, his deputies and/or prosecutors.

The role of the prosecutor is to:

- Institute a prosecution by preparing charges against the accused person, having the accused taken to court, and conducting the case against the accused;
- Ensure that the prosecution is conducted in a diligent, competent and fair manner that respects the rights of both the accused and the victim;
- Ensure that victims and other witnesses are informed of their rights in accordance with the law;
- To terminate proceedings where an impartial investigation shows the charge to be unfounded;

- Ensure due process and smooth functioning of the criminal justice system by performing their duties fairly, consistently and expeditiously, respecting and protecting human dignity and rights;
- Visit areas of custody, and
- Provide legal aid to indigent persons.



The prosecution must ensure that the prosecution is conducted in a diligent, competent and fair manner.

3.1.12 Disqualification of a judge

During proceedings, a judge may disqualify himself from hearing a case if s/he has:⁴³

- Participated in the same proceedings in another court (for example, in proceedings involving the same parties and similar issues);
 - Acted in the same proceedings as:
 - Prosecutor,
 - Defence counsel (for instance, where the judge acted in the matter before being appointed judge),
 - Representative of any party,
 - Witness,
 - Expert or technical consultant, or
 - Complainant;
- Any personal interest in the proceedings; and
- A close relationship to any person taking part in the proceedings as a judge, prosecutor, or defence counsel.

3.1.13 Hearings⁴⁴

All hearings are to be conducted in public, which means that every person is allowed to follow the proceedings. However, a court can, in certain circumstances in the interests of public decency, public health or public order, or in cases where children are involved, order that proceedings be held in private.

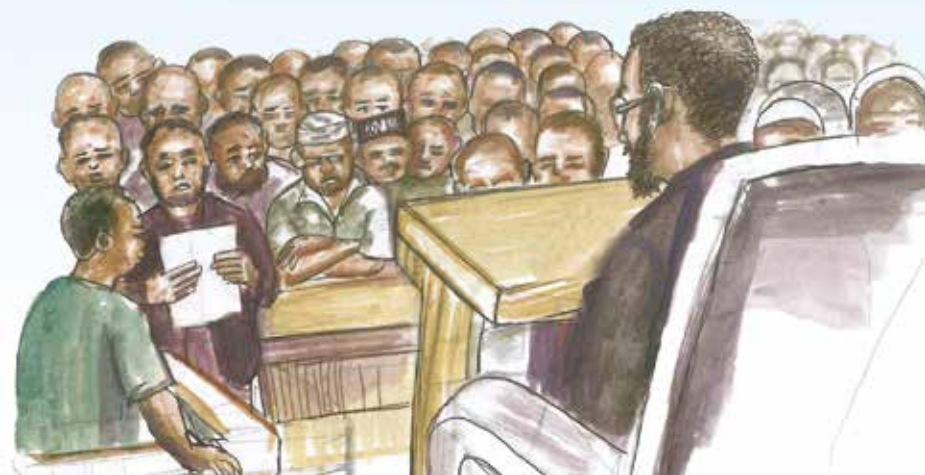
Hearings of cases are managed by a judge who is the presiding officer of the court. A judge is an impartial decision maker in pursuit of justice and s/he provides an independent and impartial assessment of the facts and how the law applies to those facts. The role of the judge in a court is therefore to:

43 *Ibid*, Article 10.

44 *Ibid*, Article 96.

- Preside over the courtroom;
- Ensure that the rules of the court are observed;
- Ensure that the trial is properly conducted in accordance with the law;
- Determine whether an accused person committed the offence s/he is accused of;
- Assess the evidence brought before the court and decide whether the same is credible;
- Interpret the law, and Sentence an accused person and impose a penalty.

Dacwadaha intooda badan waxaa lagu dhegaystaa goob furan



All hearings are to be conducted in public.

**Garsooruhu wuxuu qiimeeyaa markhaatiyada,
dhibanaha iyo eedayshanaha**



A judge equally values witnesses from both the accused and the victim.

An accused person shall attend their trial without restraint unless otherwise ordered by the court. This includes being free to attend court, free to participate in the proceedings, and the right not to be in handcuffs during court sessions. An accused person is also entitled to an interpreter if they do not understand the language used by the court. The interpreter is appointed by the court and paid by the State. The interpreter will help in interpreting the proceedings into the language that the accused person understands. This helps the accused person to follow the proceedings and participate fully.

During hearings, a court may adjourn a case. This can be done, for instance, when the accused is sick and unable to participate in the proceedings, or where the judge and/or a lawyer is unavailable, among other reasons. Where an accused person is in custody, the court can adjourn the case for a period not exceeding seven (7) days.⁴⁵

At the start of any trial, the judge shall read to the accused the charge(s) against him/her. The judge shall explain to the accused in clear terms the substance of each and every count against him/her and inform him/her of the three answers one can give and the meaning of each. As an accused person, the accused may raise an objection to the charge, plead guilty or plead not guilty. If the accused refuses to plead, it will be recorded as a not guilty plea. Defence counsel for the accused can also enter a plea of not guilty on the accused persons' behalf.⁴⁶

3.1.14 Consequences of a plea of guilty⁴⁷

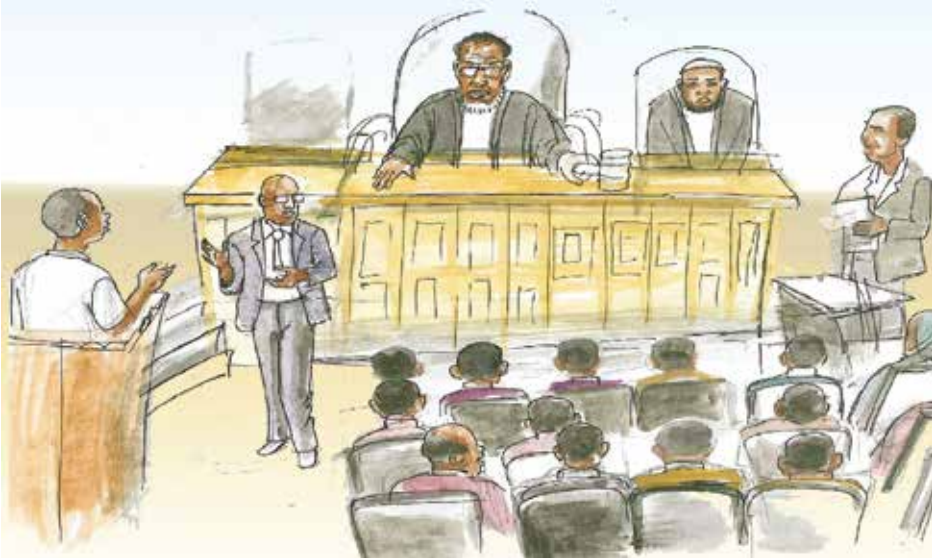
An accused person may plead guilty to any charge brought in court against him/her. Such a plea should be given voluntarily and without coercion. Where the accused pleads guilty, the court will immediately pronounce judgment of conviction where the maximum punishment for the offence is imprisonment for less than ten (10) years or a lesser punishment. If the punishment for the offence is ten years or more, then the court will order that the trial proceeds. In such a case, an accused person could withdraw their guilty plea at any time during the proceedings, but before judgment is given. At that point, the court will enter a no guilty plea.

45 *Ibid*, Article 101.

46 *Ibid*, Article 103 and 104.

47 *Ibid*, Article 108.

**Marka dacweynsanuhu qirto dembiga maxkamaddu
isla markaaba waxay ku dhawaaqi kartaa xukun**



*Where the accused pleads guilty, the court may, in some circumstances,
immediately pronounce judgment of conviction.*

3.1.15 Consequences of a plea of not guilty⁴⁸

When an accused person pleads not guilty, then the court will record such a plea and proceed to hear the case. The accused person may change their plea of not guilty at any time before judgment is given to a plea of guilty, and the court will enter a plea of guilty.

The prosecution can, however, with the consent of the court, alter a charge sheet⁴⁹. Should this happen at the beginning of the trial, the accused person will have to plead again to this fresh charge. Should the change happen after evidence has been taken, the AGO and the accused person will be allowed to re-examine the witnesses and produce fresh evidence to prove such alteration. The prosecutor can withdraw the whole charge or only parts of it⁵⁰. Where it is partly withdrawn, the court will order that proceedings on those charges be terminated. The rest of the case will proceed. Where the prosecutor withdraws all the charges, the proceedings will be terminated.

Throughout the hearing, the prosecution is under a burden to prove the case⁵¹. The AGO must prove that a crime was committed and that the accused person committed the crime. The prosecutor does this by calling the witnesses who wrote their statements with the police and producing all the exhibits that may have been collected to prove the case. The accused person will be given an opportunity, either by themselves or through their counsel, to cross-examine the witnesses who will give evidence on behalf of the prosecution and to challenge their evidence. The purpose of the cross-examination is to challenge any of the evidence that may be given by the witnesses. The accused person will also have an opportunity to give evidence in their defence where the court determines that there is sufficient evidence to show that they may have committed the offence.

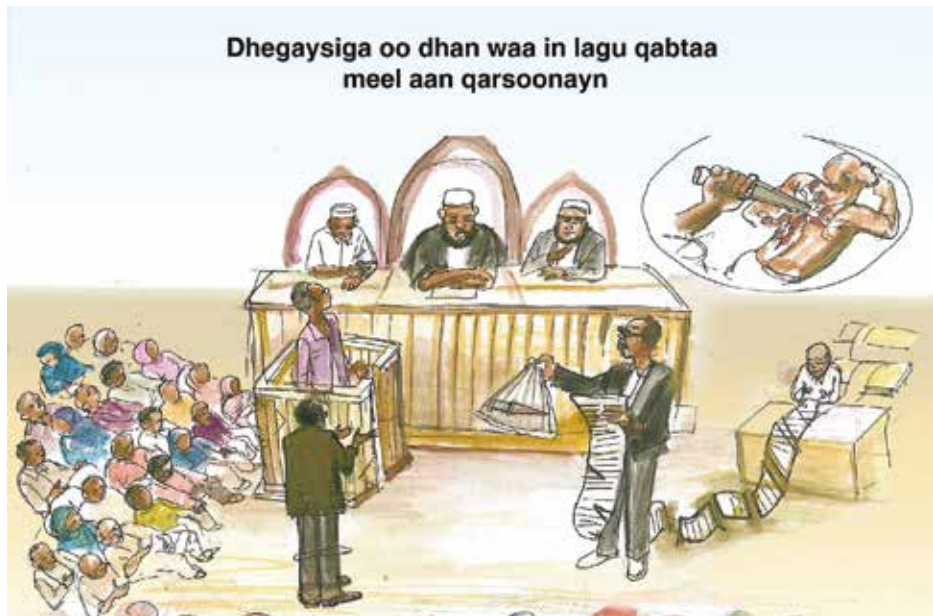
48 *Ibid*, Article 109.

49 *Ibid*, Article 111.

50 *Ibid*, Article 112.

51 *Ibid*, Article 110 and 163.

The accused person also has the right to call any person as a witness to their case. These witnesses will testify on behalf of the accused person and they will be cross-examined by the prosecution.

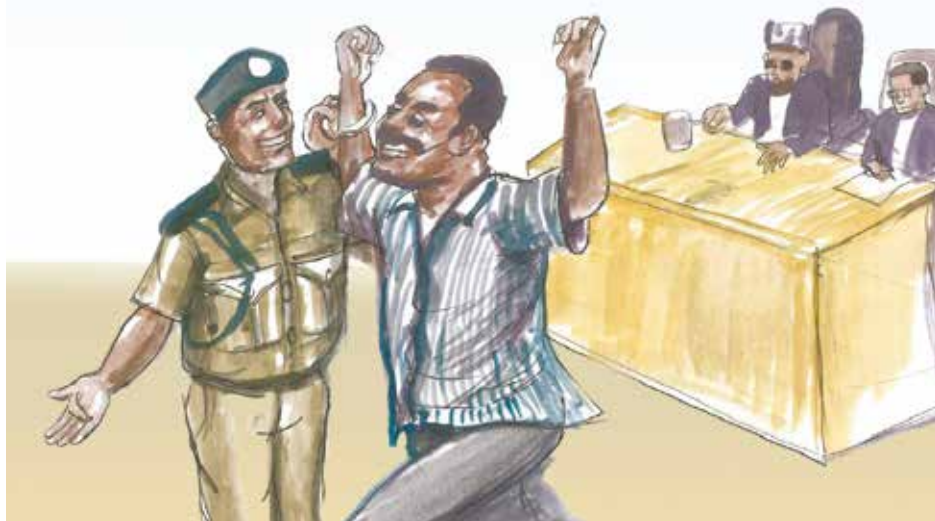


*The prosecution must prove that a crime was committed
and that the accused person committed the crime.*

3.1.16 Judgment⁵²

After the closing of a case, the judge(s) or the assessors (if involved) will deliberate on the evidence produced and write their judgment. Such a judgment will be read in open court in the presence of both the accused and the AGO. In some instances, the presence of one's counsel is enough.

**Eedayanaha lagu waayo caddaymo ku filan
maxkamaddu way sii daysaa**



*If not enough evidence is found against the suspect,
the court must release him or her.*

Where sufficient evidence is adduced, the court will find the accused person guilty of the offence and sentence the accused person in accordance with the law. Where no sufficient evidence is adduced, the court will find one not guilty of the offence and shall therefore acquit (set free).

For the court's judgment to be valid, it must be written, it must describe all the grounds for conviction and the reasons for reaching such a decision. The judgement must be dated and signed by the judge(s).

Once a judge passes judgment over an accused and convicts him, s/he has to pass a sentence. Sentencing is a decision of the court but prosecutors too have

a duty to offer assistance to the sentencing court in reaching its decision as to the appropriate sentence. They do this by drawing the court's attention to the following facts:

- Any aggravating or mitigating factors disclosed by the prosecution case;
- Any evidence of the impact of the crime on the community; and
- Any statutory provisions or sentencing guidelines that may assist the court.



Once a judge passes judgment over an accused and convicts him, the judge must pass a sentence.

An accused person may be sentenced to imprisonment, to a fine, or to both, or to a suspended sentence for a specified period as provided by the law. Where the sentence is suspended, it means that the person will not serve the sentence but will be set free. However, if the accused person commits another offence during the period of suspension, then they will be sent to serve the sentence that was suspended. The accused can get copies of the judgment upon application and free of cost. On the other hand, a complete court case file can be given on payment of a fee fixed by the Minister for Justice.

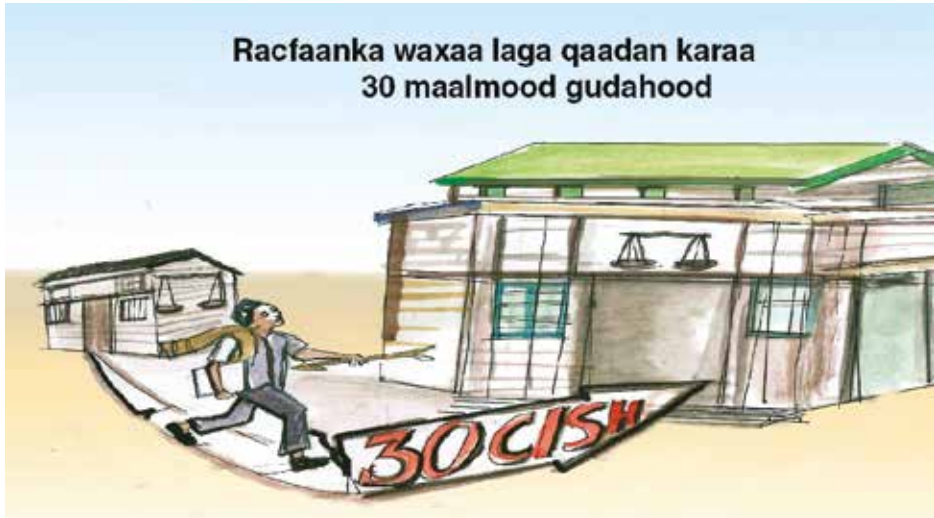
3.1.17 Appeals⁵³

An accused person who is aggrieved by the decision of a court must appeal by filing a notice of appeal within 30 days from the date of the judgement. However if for any reason the accused person cannot appeal within the time given, then the accused can apply to the Court of Appeal or the Supreme Court to extend the time given. The accused can appeal against both the conviction and the sentence, or merely the sentence. The AGO may also appeal in instances where the accused person has been acquitted. The AGO may also appeal against the sentence passed against an accused person.

The notice of appeal filed by the accused must state the reasons for such an appeal. The accused can file the notice of appeal directly with the registrar of the court, or it may be filed by registered letter or telegram to the registrar. Where the accused person is in prison or detention, the notice of appeal shall be sent to or given to the authority detaining the accused. The authority to which the notice has been sent shall immediately transmit such a notice to the registrar of the court which heard the case.

During the hearing of the appeal, an accused person may opt to be absent. However for one to be absent, they need to obtain the consent of the court. There is further room to appeal to the Supreme Court from decisions of a Court of Appeal. No appeal is allowed against decisions of the Supreme Court as this is the highest court.

53 *Ibid*, Article 210 and 211.



A notice of appeal must be filed within 30 days from the judgement.

3.1.18 The time limit for the commencement of criminal proceedings⁵⁴

Criminal proceedings shall not be commenced after the expiry of the following time limits from the date the offence was committed:

- 6 years in case of offences for which the maximum punishment is more than 5 years;
- 4 years in cases of offences for which the maximum punishment is more than 3 years;
- 2 years in cases of offences for which the maximum punishment is not more than 3 years, and
- 6 months in cases of offences punishable by fine only.

⁵⁴ *Ibid*, Article 73.

4. Juvenile Justice

IV

4. Juvenile Justice

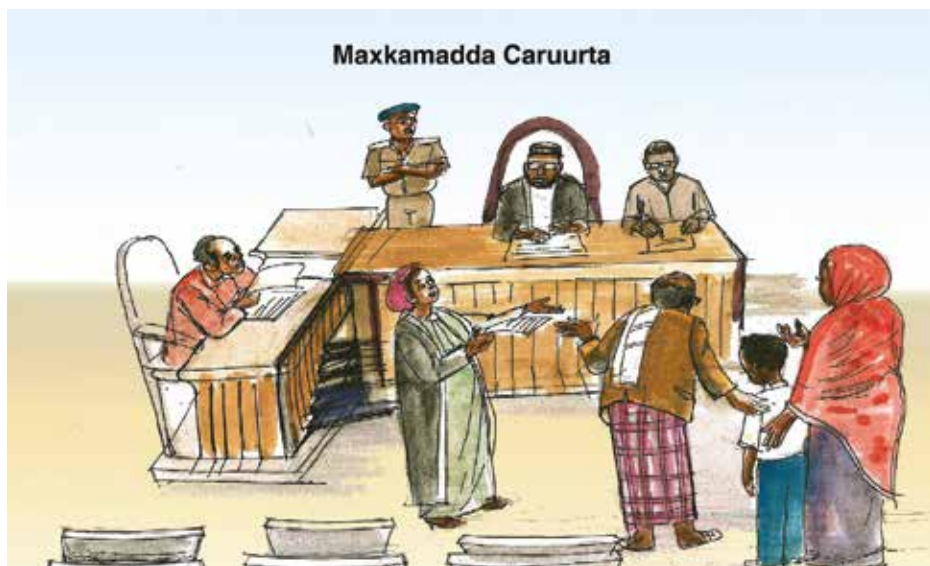
4.1 Juvenile proceedings

The Juvenile Justice Law No. 36 of 2007 deals with the rights of the child and is to be interpreted in a manner consistent with the Somaliland Constitution, Sharia'h law, and international instruments that touch on the child including the Convention on the Rights of the Child⁵⁵.



⁵⁵ Other International standards that give guidance to the administration of justice on children to which Somaliland can refer to if not ratified include: the United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1995; United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) 1990; United Nations Rules for the Protection of Juveniles Deprived of Liberty (1990); United Nations Guidelines for Action on Children in the Criminal Justice System (1997); Guidance Note of the Secretary General on the United Nations Approach to Justice for Children (2008).

A child is anyone below the age of 15 years. Any matter involving a child is handled in the children's courts. These are courts that hear and determine cases involving children. These courts, to a large extent, encourage restorative justice which focuses on the needs of the victims and the offenders as well as the involved community, instead of merely aiming at punishing the offender. This means children's courts promote reconciliation and restitution which includes compensation and responsibility, whereby the offender is expected to take responsibility for their action. The whole process involves the child, parent, other family members of the child, the victim and the community.



Children's Court

4.1.1 Purpose of the law on children

This law intends to protect the rights of the child who is in conflict with the law by ensuring there is a harmonisation of the provisions of Somaliland law, Sharia'h law and the international instruments on the rights of the child.

The law demands that the best interests of a child must be considered in all cases. The law therefore protects the following items:

- **The privacy of the child:** A child offender is to be protected at all stages of the process. This is done by ensuring that no information that may have a negative impact on the child is released to anyone or is published. Such information includes information that may lead to the identification of the child, for example their village, their parent's names *et cetera*. Information on the records of the child who has committed an offence cannot be released. Such information is deemed to be confidential to third parties, unless such a party is directly involved in the case or is an authority like a police officer, a probation officer, a parent or guardian, legal representative or a judge.
- **The liberty of a child:** The law determines when a child's liberty can be taken away. This can be done in cases where the child is found *in flagrante delicto* or is accused of committing any offence. A child's liberty will only be taken away as a last resort and only for a minimum period and in a place that is permitted by the law.
- **Punishment that can be passed against a child:** The law provides for a specific punishment that can be passed against a child once the child is found to have committed an offence. The following sentences cannot be passed on a child: death sentence; life imprisonment; corporal punishment; and a sentence of a period exceeding 15 years.
- **Participation:** The law allows the child to participate fully in any proceedings where the child is a party. The participation includes allowing the child to give their views/evidence that are all taken into account in making a determination in the matter.

**Ciqaabaha ka reeban ilmaha
(Dil iyo Xabsi Daa'in)**



A death sentence and life imprisonment should not be given to a child.

4.1.2 Criminal proceedings against a juvenile

Under the Penal Code⁵⁶:

- A child who is under the age of 14 years is not liable for an act they may have committed. Such a child is said to lack understanding at the time of committing the offence⁵⁷.
- A child below the age of 15 years is not criminally liable for any acts committed by him or her. A person can only be held liable if they have the capacity to understand the crime and act.

⁵⁶ Penal Code of Somaliland, Article 59.

⁵⁷ Penal Code of Somaliland, Article 47.

- A child between 15 years and 18 years may be criminally liable for offences committed. However, if at the time the child committed the offence s/he had attained the age of 14 years but not 18 years, the child will be held liable if, at the time of committing the crime, the child had the capacity to understand the nature of the crime. The child's sentence will be reduced.⁵⁸

A child accused of committing an offence has the following rights:

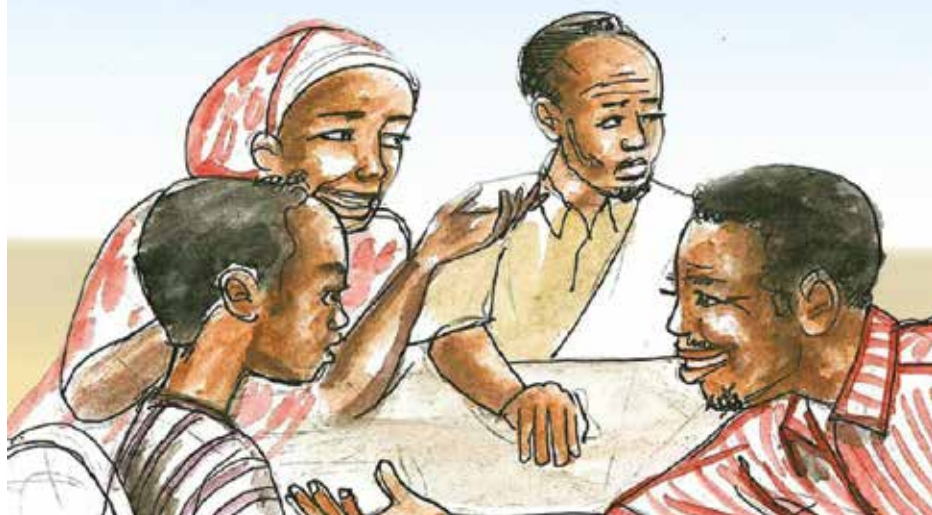
- To be notified of the charges against him/her;
- To have their parents/guardians informed of the reasons of the child's arrest;
- To be presumed innocent until proved guilty by a court of law;
- To have legal counsel and to communicate freely with them;
- To be questioned only in the presence of their parents, guardians or legal counsel;
- Parents/guardians to be present at all the stages of the proceedings;
- To be taken to court promptly;
- To be allowed to call and cross-examine witnesses;
- To appeal against a decision of the court they consider unsatisfactory;
- To free interpretation of the proceedings;
- To be protected from any form of physical punishment;
- To be detained separately from adults and girls from boys;
- To have regular visits from parents/guardians/lawyers and family, and
- To be represented by legal counsel.

4.1.3 Arrest of a child⁵⁹

A child under the age of 15 years cannot be arrested of any offence unless his safety requires that he should be arrested. His/her parents must be notified of such an arrest. An arrest of a child can only be done by a special force of the Children Police Unit. Once a child is arrested, they are to be taken to a pre-trial detention centre. The centres are responsible for:

- Security of the child until they are tried or released;
- Basic necessities, and
- Preparation of the child's individual reports, profiles and assessments which are submitted to the court.

Ilmaha la soo eedeeyaa waa inuu helaa qareen

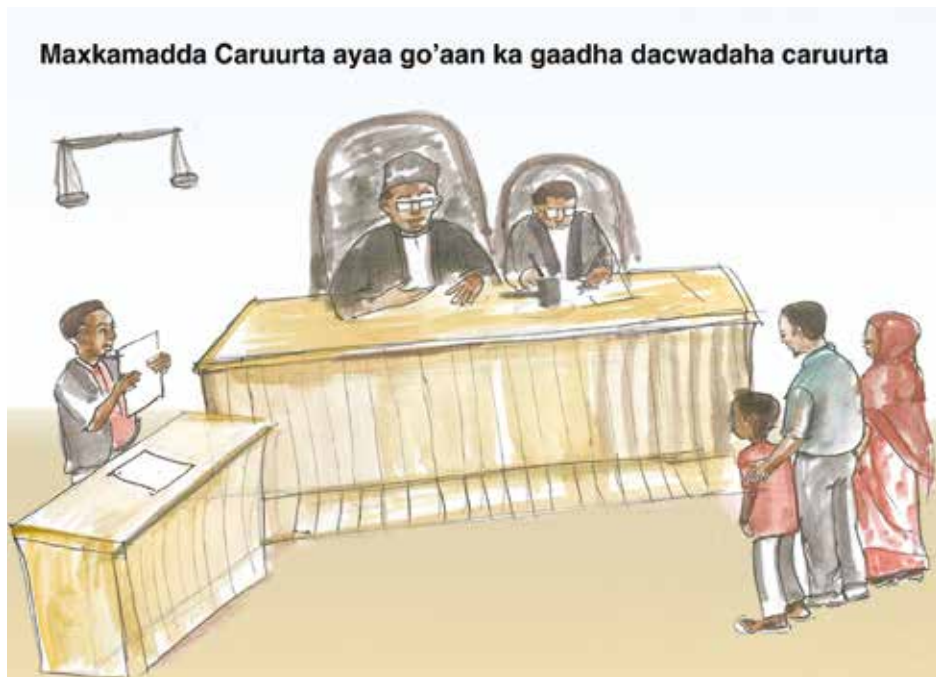


A child accused of committing an offence should have his parents or guardian present at all times during the court process

Upon arrest, the police must report an arrest of a child to the Office of the Attorney General and to a Children's Court within 24 hours. If this is not done, a written report must be given to the court explaining reasons for not reporting.

4.2 Children's Court

This is a court that hears cases involving children. The court is not open to the public except the family of a child, the police, probation, children officers, civil society organisations engaged in children matters, and any other persons permitted by the court. A child must be assisted by a parent or guardian or an adult appointed by the court at all times.



Any matter involving a child is handled in a children's court.

Dhegaysiga dacwadaha caruurta uma furna bulshada



Children's courts are not open for the public.

A child may appear in court through being arrested and brought to court⁶⁰. A child is to be taken to court within 48 hours of arrest or on the first day of court. A report must be prepared by the police and submitted to the court on the first hearing. Such a report must have: the facts of the case, the reasons for the arrest, and the personal details of the child and any other person involved in the case.

A child can also appear in court through a summons issued by the court requiring them to do so. Where a child is summoned to appear in court, the summons will be served on the child and their parents/guardians. The summons will specify the time and place of hearing. A child can also be required to appear in court through a court order. It is mandatory that a child be assessed by a probation

⁶⁰ Criminal Procedure Code, Section 35.

officer before the child appears for the preliminary hearing of the court. It is therefore important that the police notify the probation officer of such an arrest or summons within 24 hours. Where a child is alleged to have committed an offence with an adult, their case will be heard separately unless it is in the interests of justice for them to be tried together. However, such a trial will be heard at the children's court.⁶¹

4.2.1 Bail

An arrested child may be released on bail. This involves being released into the care of his/her parents or guardians, and on such terms or conditions as the Criminal Procedure Code provides. The parents must adhere to the conditions of bail or otherwise the bail will be cancelled. Such conditions include appearing in court when required, and not committing an offence when out on bail.



*An arrested child may be released on bail into
the care of his/her parents or guardians.*

4.2.2 Preliminary hearing

During the preliminary hearing, a child will be required to respond to the accusation of the offence. The court will determine whether:

- The matter can be diverted to be handled by agencies other than the court;
- It is possible to identify suitable diversion options for the child;
- The matter should be transferred to a children's court for trial, and
- To provide an opportunity for the Attorney General to assess whether there are sufficient grounds for the matter to proceed to trial.



During the preliminary hearing, a court will determine whether the matter should be transferred to a children's court for trial

The preliminary hearing will be conducted in an informal manner through asking questions, interviewing persons and eliciting information. The child, its parents/guardians, the AG, the probation officer and the police officer who investigated the case, must all attend such proceedings. During such a hearing, the judge must inform the child of his/her rights, the procedure to be followed, and the purpose of the hearing. It is important that the judge ascertains the age of the child and other resolution mechanisms that may be applicable. A preliminary hearing can only be adjourned for a period not exceeding 48 hours if it is in the interest of the child, for example if the child is sick, or the child needs to consult a lawyer.

4.2.3 The time limit for handling trials involving a child⁶²

Trials involving a child must be concluded speedily with limited adjournments. They must be concluded within a period of six months from the date the child is charged. Where the child is in detention and the trial cannot be concluded within the specified timeframe, the case of the child will be heard in suspension. Where there is no charge brought against a child, that child can only be kept in custody for three months and the matter could be diverted to other favourable mechanisms/options.

4.3 Diversion

Diversion involves using other friendlier mechanisms to resolve child cases. It evades the usual criminal justice processes by resorting to options such as the use of customary laws, restorative justice in line with the Somaliland Constitution, and other international human rights instruments, norms and standards. A judge can make the following orders during this process:

- Compulsory school attendance for a specified period of time under supervision;
- Family time order wherein a child is required to spend time with his/her family;

- Good behaviour order requiring a child to abide by an agreement made between the child and his/her family to comply with certain standards of behaviour;
- A positive peer association order requiring a child to associate with persons who can contribute to positive behaviour in the child;
- A reporting order requiring the child to report to a specified person at specified time. This process enables such person to whom a child reports to monitor the behaviour of the child;
- A supervision and guidance order which places a child under the supervision and guidance of a mentor or peer in order to monitor and guide the behaviour of a child, or
- Any other diversion order that is in the best interest of a child and which includes: restitution, the provision for the child to be sent to their home district, and an apology (written or oral).

Jihayn: Waxa ka mid ah waxbarasho qasab ah



Diversion may involve compulsory school attendance.

These diversion methods are aimed at understanding the needs of the child, promoting the reintegration of the child into the family and the community, promoting reconciliation between the child and the persons or community affected by the harm caused by the child, and preventing the child from having a criminal record.

During diversion, the child is supervised by a probation officer. Where a child fails to comply with any condition of the selected option, then the probation officer will notify the judge who will issue a warrant of arrest for the child. The child is then heard on their reasons for failing to comply. The judge may then apply the same option of diversion with altered conditions, apply other diversion options or make an appropriate order to comply with the diversion initially made.

4.4 Sentencing a child⁶³

As mentioned earlier, certain sentences cannot be imposed on a child. Imprisonment of a child is only considered where the court determines that there are chances of the child being rehabilitated while in prison. A court may pass a sentence against a child where the child commits the following offences:⁶⁴

- A crime punishable by death sentence, life imprisonment or imprisonment for a period of not less than ten (10) years;
- The child is a recidivist, or
- The child is of a dangerous character to the community.

63 Republic of Somaliland Constitution, Article 83.

64 Juvenile Justice Law (2007), Article 86.

Ilmaha caadeystaha noqda waxa lagu hayn karaa xarun dhaqan celin



A court may pass a sentence against a child where the child is a recidivist.

4.5 Appeal⁶⁵

A child can appeal against any judgment against him/her. Such an appeal is in accordance with the provisions of the Criminal Procedure Code discussed above.

⁶⁵ *Ibid.*, Article 87.

5. Gender And Human Rights



5. Gender And Human Rights

5.1 Sexual and Gender-Based Violence

Gender can be defined as “*the roles, responsibilities, values and attitudes*” ascribed to women, men, boys and girls by a given society at a given place and given time. Since gender refers to the social roles of men and women at a specific time, these are always changing. Gender roles are therefore different from one society to another. Sex, on the other hand, is the biological difference between women and men that defines the female and the male. The stated sexual features and functions are fixed, physical and biological and do not change from one community to another.



Types of gender-based violence include mental and physical abuse.

Gender-based violence (GBV) refers to the type of violence that is directed to women or men because they are women or men. These types of violations can be expressed physically, psychologically, sexually and economically. GBV is an umbrella term used to describe any harmful act that is perpetrated against a person's will and is based on socially ascribed (gender) differences between males and females. GBV is thus a gross violation of human rights and a significant public health issue. Acts of GBV violate a number of human rights protected by international law and Somaliland law. Around the world, GBV has a greater impact on women and girls than on men and boys. The term "*gender-based violence*" is often used interchangeably with the term "*violence against women*" and it highlights the gender dimension of these types of acts; in other words, the relationship between females' subordinate status in society and their increased vulnerability to violence. Gender-based violence is also used to distinguish common violence from violence that targets individuals or groups of individuals on the basis of their gender. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and deprivation of liberty. Sexual and gender-based violence is also based on myths and beliefs of the community.

5.2 Types of sexual and gender based violence

Physical violence which includes:

- Battery, sexual exploitation, sexual abuse, dowry-related violence, marital rape, rape, incest, defilement, female genital mutilation and other traditional practices harmful to women and men.

Psychological / mental violence which includes:

- Verbal abuse, wife inheritance, threats, and mental harassment.



5.2.1 Sexual violence

Sexual violence includes offences such as rape and defilement. According to the Somaliland Penal Code, rape is committed when a person using violence or threats has carnal intercourse with another person of the other sex. The Penal Code also provides that rape is also committed where one has carnal knowledge with a person of the opposite sex who is incapable of giving consent or who has been deceived by the offender who impersonates another person.⁶⁶

The sentence for such acts, if one is found guilty, is five to fifteen years. Other offences of a sexual nature that can be committed against a woman include: acts

⁶⁶ Penal Code of Somaliland, Article 398.

of lust committed with violence that do not include carnal intercourse (Penal Code, Article 399); unnatural offences committed with violence that are acts of carnal knowledge committed against a person of the same sex or a person of a different sex against nature (Penal Code, Article 400); abduction for purposes of lust or marriage where a person uses violence or threats or deceit and abducts or detains a person for purposes of carnal violence or lust, or marriage.

An offence of sexual violence must be reported to the police. Once reported, the police must ensure that: they take down the report and record it in the Occurrence Book; record the statement of the victim and their witnesses; where the victim requires medical assistance, they should be taken to hospital for medical attention; the suspect is arrested and taken to the police station.

Despite the views of the community on SGBV, the law defines such acts committed as criminal acts and requires that they should go through the criminal process.

5.3 The right to report

A victim/survivor of GBV has the right to report an abuse to the police. Once this is done, it is important that medical examination and treatment of the victim/survivor be prioritized and a report prepared. This treatment should include psycho-social counseling. Upon a report being made, the police must ensure that the victim is protected from any victimization by the perpetrators and their family.

A report on GBV should be made to any police station in Somaliland, which must register the complaint. Such cases are best handled by the gender desks at the police stations. Such desks are found at the Central Police Station and the New Hargeisa Police station. However, where such desks do not exist, any police officer at the police station will register the complaint. Once this is done, the police are required to arrest the accused person(s), conduct investigations, prepare charges, serve summons and ensure that the case is prosecuted. The crime scene is supposed to be identified, secured and protected from any damage until all evidence is collected. This includes the victim who is also a crime scene.

It is also important that the victim's family is identified and notified of the condition of the victim and the progress of the case. The police should also follow the procedures in ensuring the Attorney General (AG) and the court are informed of the arrest and the criminal procedures are followed in prosecuting the case through to finalisation. The AG should then get a report of the case and prosecute the same. At all times, the AG should ensure that GBV cases are not heard and finalised by the elders and other clan members.

5.4 Customary dispute resolution for rape and other gender-based violence cases

Under customary law, an unmarried woman who is raped would usually be condemned to marry the rapist. Her right to refuse such a union is mostly overcome by family and society pressure on her to accept, and to not shame the family. Alternatively, a rapist has to compensate his victim's family with camels. This process leads to the discrimination of women's rights.

Many of such cases do not reach the police, yet this amounts to a serious crime. Due to an agreement entered into between the elders and the government in 2010, the elders can no longer hear these cases.



"Do not force me to marry the man who raped me."

6. Legal Aid In Somaliland

VI

6. Legal Aid In Somaliland

Legal aid is a cornerstone of a just society, where members of the society especially the poor, the vulnerable, marginalised and disadvantaged have equal access to legal and judicial services. Legal aid enables members of society to seek and obtain justice and judicial remedies from the formal justice systems. Legal aid may include:

- Provision of legal representation in court;
- Provision of legal advice;
- Awareness creation;
- Provision of legal education;
- Provision of assistance in:
 - Resolving disputes other than through legal proceedings;
 - Taking steps preliminary or incidental to any proceedings, or
 - Arriving at or giving effect to any out-of-court settlement that avoids or brings to an end a proceeding.

Legal aid provision in Somaliland is guaranteed under various provisions of laws. These include Article 28(3) of the Constitution which guarantees everyone the right to institute proceedings in a competent court of law and to defend oneself. The State is under a duty to provide free legal defence in matters that are determined by the law, and courts may waive court fees for indigent persons. Article 14 provides for the right of any party to be represented by an attorney in any proceedings. It is mandatory in law that parties be represented by counsel in accounting and administrative proceedings before the Supreme Court, and in criminal proceedings where the accused is charged with an offence punishable by death, imprisonment for life or imprisonment for more than twenty (20) years. The law mandates courts to appoint defence counsel for the accused in such serious crimes, where the accused person has not appointed his/her own defence. A person who is not on the roll of advocates may be appointed in such a capacity. Where the litigant is poor, the fee for the lawyer is to be born by the State.

The Criminal Procedure Code (Article 15) also allows an accused person the right to be defended by counsel.

Internationally, the International Covenant on Civil and Political Rights guarantees one equality before the courts and tribunals. Article 14 of the Convention guarantees access to justice and a fair trial. One of the minimum guarantees under this Convention is for one to be tried in one's own presence, and to defend oneself in person or through legal assistance of his own choosing, or to have assistance assigned to him in any case where the interests of justice so require, and without payment where one does not have sufficient means to pay for it.⁶⁷ Access to a lawyer is therefore a fundamental basic human right. Similarly, the African Charter on Human and Peoples' Rights guarantees one the right to be presumed innocent until proved guilty, and to defend oneself using counsel of one's own choice.⁶⁸

6.1 Provision of legal aid in Somaliland

Legal aid services are provided by various government institutions and departments and NGOs, including:

- The Attorney General's Chambers;
- The Ministry of Justice;
- The University of Hargeisa operating in Hargeisa;
- The Somaliland Lawyers Association (SOLLA);
- The Somaliland Women Lawyers Association (SWLA) in Hargeisa, Gebiley and Burco
- The Amoud University Legal Clinic in Boroma.

67 International Covenant on Civil and Political Rights, Article 14 (3).

68 African Charter on Human and Peoples' Rights, Article 7.



UNODC

United Nations Office on Drugs and Crime