



XAQDOON LAW FIRM

The premier law firm commanding trust, respect and everlasting professional relationship



XAQDOON LAW FIRM UPDATES 2020

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ABOUT XAQDOON LAW FIRM



Xaqdoon Law Firm, officially founded in 2006, is the first law firm established in Somaliland where legal practices are dominated by individual general practice lawyers. XLF has many lawyers with diverse specializations in all major legal areas such as litigations, business and commercial, taxation and financing, I/LNGOs, employment, and criminal cases. XLF has been providing legal services to local and international NGOs, companies, political parties and individuals. It is a law firm with a reputation for its unique client-based service. Each area is led by a lawyer with expertise.

The Firm has partners, associates and access to a network of highly qualified lawyers. As such, the Firm is in well placed to service the requirements of its clients across the country in all fields of law. The lawyers and other professionals of the Firm collectively present significant and diverse professional experiences in the legal fields. The Firm focuses on providing high quality, business oriented, innovative and cost-effective legal solutions to clients.

Vision

To be a premier law firm commanding trust, respect and everlasting professional relationship.

Mission

To provide effective and innovative legal solutions to our clients in a time bound manner adhering to internationally acceptable standards of quality.

Our Values

To attain professional excellence. To always act with fairness, integrity, ethics, diligence and social responsibility.

Services

The services we provide include, but not limited to legal drafting, legal advice, translations, advocacy, legal representation, legal analysis and legal research, legal awareness campaigns, consultancy, conducting training and workshops and pro bone service.

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ABOUT XAQDOON LAW FIRM PUBLICATIONS

Xaqdoon Law Firm publishes to contribute to the legal development in Somaliland and Somalia. The aim is to highlight areas that need attention and provide recommendations as part of the Firm's commitment towards development, rule of law, constitutionalism and human rights. Also, we carry out researches and legal analysis for our clients including government institutions, international and national NGOs and companies.





LEGAL PLURALISM WORKSHOP BRIEF

WORKSHOP BRIEF: LEGAL PLURALISM: COMPLEMENTARITY OR COMPETITION?

Introduction

The Republic of Somaliland has a constitution that delegates the law-making powers to a bicameral Parliament. The law-making powers are vested with the Parliament and "the power to legislate cannot be transferred to anyone outside the Parliament (article 38). The constitution created a judiciary system tasked to "adjudicate on proceedings between the Government and the public and between the various members of the public (article 97). Since 1993, the first time a charter was formulated in Borama Conference, numerous laws have been passed by the Parliament.

The judiciary and justice institutions are concentrated in urban areas with little or no presence in rural and nomadic communities. The customary system is prevalent in these areas. But also, it used in urban settings for both civil and criminal cases. The customary system fills the vacuum in places where justice institutions are not present.

Arguably in an increasing rate, a Sharia Law based offices serve as alternative dispute resolution (ADR) mechanism in urban places, particularly in Hargeisa. The Sharia-based ADR offices do not exist in rural and nomadic areas. Their usage is relatively new, and accessible for town people who can pay fees.

With this pluralistic system, there is no legal framework governing the relationships of the three systems. This legal lacuna raises many questions and often complicates the process where there are incidents of overlap, forum fishing and challenges in the enforcement of decisions.

Xaqdoon Law Firm held a workshop on 30 December 2019 in Hargeisa. The workshop brought together practitioners of the three to discuss complementarity and/or competition and to analyse solutions for any challenges facing the users of these systems. Particular emphasis was made on the formal legal aspect in recognition or lack of in enforcing decisions made through customary or religious-based ADR. The participant discussed what are the challenges and how these challenges can be addressed.

Objectives

The objectives of the workshop were:

- To bring together experts of the field who do not often meet to discuss solutions and make recommendations;
- To gap the bridge and start a dialogue among the practitioners;
- To raise the awareness surrounding the issue;

Participants

Practitioners in law, customary system and Sharia-based ADR offices attended. Also, service users and members of the civil society participated in the workshop as well as relevant government authorities. The Director General of Ministry of Justice, Abdirahman Sheikh, and the Director General of Ministry of Constitutional Affairs and Parliamentary Relations, Jamal Abdi Muse, opened the workshop.

Presentations were made by Mohamoud Hussein Farah, the dean of College of Law, University of Hargeisa and Mohamoud Abdirahman Sheikh Nour, a senior lawyer. A panel was convened to have a conversation of the topic. The panellists were Chief Aqil Abdi Guleid Gabobe, Jamal Hussein Abdi, the secretary general of lawyer's association and Hibo Adan Gaheir, an activist who is a lawyer by training.

Somaliland's many justice providers

In many parts of the country, there are no courts, police stations and prosecution offices. The nearest institutions are tens of miles away, physically unreachable. The population is divided into rural, nomadic, urbane and IDPs. Government institutions are concentrated in urban areas, particularly in main cities at the centre of the country. In vast nomadic and rural areas, clan elders are the sole justice providers. They are not only closer to the people, but they are also among them with less cost and solve disputes through centuries old system familiar to the people. Customary law is not confined to rural and nomadic areas. It is used in cities, not only ordinary citizens but sophisticated business people as well.

Dispute resolution offices that apply Sharia are increasingly opening up in main cities, particularly Hargeisa, the capital city. These offices run by sheikhs apply Sharia on cases voluntarily submitted by parties. As an alternative dispute resolution mechanism, Sharia offices receive cases only if the parties consent in writing. They charge fee equally paid by parties of the case.

The three systems are not in a different three rivers running in parallel. Courts apply the formal law enacted by the parliament. Article 5 of the Somaliland constitution states "that the laws of the nation shall be grounded on and shall not be contrary to Islamic Sharia." Additionally, courts use Sharia in family cases and other civil cases when there is no provision of the law to apply. Judges at courts include Sharia trained

individuals who are more comfortable in using Sharia than the formal law. Lawyers and parties often cite Sharia in their arguments and judges cite Sharia in civil cases, but also sometimes in criminal cases, particularly in capital punishment.

Enforcement of decisions made by Sharia offices and clan elders is an issue dealt with by the courts. Parties file decisions with courts and others use as evidence. There are cases in which courts refer to elders or Sharia based offices. The same happens when elders or Sharia based offices send cases to the court. The three are mixed and one case can go through two or the three forums.

Somaliland's political structure is mainly shaped by clan affiliations. Power is shared and distributed among clan lines. This dynamic is not missing in the judiciary. The leaders of clans influence the appointment and promotion of judges. In return, clan elders have some influence in the justice delivery of the judiciary. Furthermore, clan elders from stronger clans have pressure on the politicians, which may influence the judiciary.

Aqils and Sultans are registered by the Ministry of Interior. The Ministry uses the registration to exert influence on who can become aqil or sultan. Although aqils and sultans are not the only arbiters in the customary system, they have power, and the governments regulation tends to insert government voice in their work. Registered aqils receive stipends from the Ministry of Interior.

The government works with traditional elders by enforcing their decisions. For instance, when a member of a clan refuses to pay contributions of blood compensation in his diya paying group, the aqil can ask the police to detain the person to force him to make the payment. Such detention violates the constitution and the laws of the country. Nevertheless, government institutions continue to depriving people's liberties on behalf of clan elders.

The experts in the workshop highlighted the lack of formal laws to address the issue of the three systems. The formal laws ignore the customary law and other forms of dispute resolution mechanisms. This puts people in a difficult situation. In absence of formal law recognition, decisions made in the customary system and in Sharia based offices are not automatically recognized and enforced by courts. There is no law facilitating parties of such disputes to register a decision in a court. This is, partly, because the Somali Civil Procedure Code is an outdated law, and Somaliland is yet to have its own civil and criminal codes.

Women and human rights defenders present at the workshop emphasized the shortcomings of the customary law and Sharia based offices in terms of protection of human rights, particularly in gender and sexual based violence. The customary law is highly patriarchal. Only men sit as judges and women are not allowed to attend even when they are a part of the case. Male relatives represent women. Customary law does not impose individual punishment. All clan members are obliged to by blood compensation. No matter the gravity of the crime committed, the perpetrator goes unpunished. Victims of rape and sexual violence cannot find justice in the customary system.

Cases handled by courts are interfered by elders who resolve outside of the court system. Women are always victims of such interferences. The Somali Penal Code does not accept criminal cases to be handled outside of the court, expect a few misdemeanour cases. Nevertheless, fusion exists strongly. The lenience of the criminal justice sector for clan elders is robust.

The issue of trust and corruption have been raised. Some people do not trust the state institutions and prefer the other two forms. Trust and confidence are matters that are multifaceted and cannot be easily explained. However, the judiciary and law enforcement institutions have more work to do to address this issue. The customary law and Sharia based offices are cheaper than the formal system.

The customary law's strength in urban areas has been acknowledged. People prefer to first approach elders in resolving disputes. Many cases never register with courts and are handled by elders. It is not the only day to day quarrels that are fixed in the customary law system, but the business community prefer to use them because of its expedience in delivering judgement and costing less. The outdated Civil Code and absence of commercial courts make formal courts unattractive for business people who do not want to be in a dragged and prolonged legal battle at courts.

Lawyers and elders were divided on how to approach the matter. Lawyers suggested formulation of laws addressing the issue and operations of the three systems. Understandably lawyers view the formal system as the legitimate form of dispute resolution. However, they accepted the fact that the formal system is far to provide justice to all of its seekers. They acknowledged that currently the customary system offers services that cannot be provided by the state.

For many citizens, the state is only by name, but not a provider of services. Rural and nomadic communities

rely on their traditional system for justice and security. In such areas, one cannot talk about three systems. There is one system and that is the customary law. It is cities where the discussion of a formal system, Sharia offices and customary law exist.

Conclusion

The participants of the workshop agreed that the topic requires more discussion and researches. The literature currently available on the topic is limited. Practitioners of the three systems rarely come together. The formal system cannot continue ignoring mechanism providing justice to many of its citizens. The laws of the country need to be updated with the consultation of the public and experts of the three systems. In enacting new laws and reforming institutions, the government should take into consideration the legal pluralism.

Sharia based dispute resolution offices are increasing in cities. There is no proper legal requirement to register these institutions, which are new to the justice sector. The government needs to legislate alternative dispute resolution law to fill the legal lacuna and offer the clients of Sharia based offices and other dispute resolution mechanisms opportunity to seek justice in an enforceable and recognized forum. Additionally, in the era of global terrorism and the presence of extremists the region, the political and ideological dimension need to be taken into account.



DEATH PENALTY IN THE SOMALI PENAL CODE

DEATH PENALTY IN THE SOMALI PENAL CODE

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1. Introduction

This brief report outlines the death penalty provisions in the Somali Penal Code which are used in Somalia and Somaliland. The outdated law enacted in the early 1960s predates both the Constitution of Somaliland (2001) and the provisional constitution of Somalia (2012). The Code contradicts the fundamental rights enshrined in the constitutions and international human rights law applicable to Somaliland and Somalia. Although the Code has no roots in Islamic Law, and most capital provisions are not in conformity with Sharia, it is widely believed among Somalis that death penalty is ordained by Sharia and as such religious connotation is given.

The Penal Code was used by the dictatorship regime of Somalia (1960 to 1969) to execute political dissents, critics and people the military regime suspected of having sympathy for opposition forces. Its draconian nature made possible for any government to utilize it in a barbarous way.

During the scramble of Africa when colonial powers arbitrarily divided and colonized Africa, the Somali people happened to be divided into five areas. The British colonized Somaliland, Northern District Frontier and Hawd and Reserved Area, which were handed over to Kenya and Ethiopia, respectively. The French ruled Djibouti which is predominately Somali with other ethnicities. Italy colonized Somalia.

In 26th June 1960, Somaliland secured independence from Britain. Somalia celebrated freedom a few days later, 1st July 1960. At that same date, the two formed a union in pursuit of uniting all Somalis under one state and obliterating the colonial set borders. The fact that the two were under different colonial legal systems made difficult to forge a single legal system. The common law system of the British and the civil law of Italy were incompatible. The constitution of the Somali Republic was approved in a national referendum in 1961. It became paramount importance to unify the legal systems and enact laws applicable to both territories.

During the colonial era, the Indian Penal Code was applicable in Somaliland whilst Somalia had the Somalian Penal Code which was first prepared in 1957. The Somali Parliament passed in 30th January 1962 a law delegating the government to enact a unified penal law ¹. The Indian Penal Code remained applied in Somaliland until 1964. In 1964 the Somali government adopted the Italian 1930 Penal Code with “few changes.” The new Penal Code replaced and repealed the Indian Penal Code (Somaliland) and the Somalian Penal Code of 1957.

¹http://www.somalilandlaw.com/criminal_law.html

Copied from the 1930 Penal Code of Italy which was under a fascist regime, the Somali Penal Code had little sympathy for protection of human rights and value of life and dignity. It puts the “state” at the centre of its principles and aimed to protect the state under any cost. The post-colonial civilian government stayed in power only in 9 years (1960-1969). The military toppled the democratically elected government on 21st October 1969 and rescinded the constitution. The military has not changed the Penal Code which served its interest. Twenty one years of military rule has shaped the Penal Code in a more authoritarian document due to constant interpretations and use of the Code by a militaristic institutions and mentality.

In 1991, the military government was removed from power by rebel groups. In the northwestern of part of the country which was under the British rule during the colonial times declared separation from the rest to "restore the independence lost to the union." Despite the declaration of independence, Somali Penal Code along with other laws remain applicable in Somaliland. The Federal Government of Somalia which sits in Mogadishu and the federal member states also apply the Penal Code. Therefore, despite the political status of the territories that united on 1st July 1960, the Somali Penal Code is the substantive criminal law for all. This brief intends to outline the provisions in the Somali Penal Code that carry the death penalty. It aims to highlight that death penalty situation of Somaliland and Somalia to show the decision makers, the public and international partners that its application is both dangerous and not grounded on the religion of Islam as many do believe. The Somali Penal Code is a secular law that traces back to the fascist regime and has nothing to do with any religion. Furthermore, it is a document that makes many vaguely defined acts punishable to death.

This is coupled by serious concerns of due process of law in countries that have been destroyed by a prolonged civil war which obliterated the judiciary system. for instance, in Somalia, the military courts do handle serious cases including death penalty cases because of the non-existence of functioning civilian courts. In many of the federal member states of Somalia, clan militias run these territories with no functioning judiciary system.

2. Somaliland and international human rights law

Despite being an unrecognized country, the constitution of Somaliland is clear about the obligation of Somaliland in observing human rights standards enshrined in international human rights laws. Article 10(2) of the Constitution says “the Republic of Somaliland recognises and shall act in conformity with the United Nations Charter and with international law and shall respect the Universal Declaration of Human Rights.” In

paragraph 2 of article 21, the Constitution further states that "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."

The international law guarantees the right to a fair trial. Both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) do provide such guarantees by requiring all states to ensure fair and public hearing by independent courts and tribunals. The concept of a fair trial is elucidated in the UDHR and ICCPR. Approved in a referendum in 2001, the Constitution of Somaliland has the following guarantees:

The Constitution of Somaliland protects the right to fair trial and guarantees:

- o Every person shall have the right to security of his person. Physical punishment and any other injury to the person are prohibited.
- o Crimes against human rights such as torture, extra-judicial killings, mutilation and other similar acts shall have no limitation periods.
- o No person shall be deprived of his liberty except in accordance with the law
- o No person may be arrested, searched, or detained, except when caught in flagrante delicto, or on the issue of a reasoned arrest warrant by a competent judge.
- o Crimes and (their) punishment shall be laid down by the law, and no punishment shall be administered in a manner which is contrary to the law.
- o The liability for the punishment of any crime shall be confined to the offender only.
- o An accused person is innocent until proven guilty in a court.
- o Any person who is deprived of his liberty has a right to meet as soon as possible his legal representative, relatives or any other persons he asks for.
- o Any person who is deprived of his liberty because of alleged criminal offences shall have the right to be brought before a court within 48 (forty-eight) hours of his arrest.
- o No person shall be compelled to proffer a confession, a witness statement or testimony under oath. Any such matters (evidence) obtained under duress shall be void.
- o No person shall be detained in a place which is not determined by law.
- o Any accused person who is convicted by a court shall have the right to appeal to a higher court.
- o When a person is detained in custody or his detention is extended, he shall have the right to have his status communicated to any person he so chooses.
- o Every person shall have the right to defend himself in a court.
- o The state shall provide free legal defence in matters which are determined by the law, and court fees may be waived for the indigent.

3. Executions in Somalia

In Somalia, most of death penalty convictions and executions are carried out by military courts. Court judgements are often based on confessions. Some are televised and circulated in media. Many of the convicts are accused of membership of Al Shabaab. There is a short period between the date of conviction and execution. The military courts of Somalia have only two stages; the first instance court and the Supreme Court, which is the final appeal court. Judges are military officers.

For instance, on 5th August 2019, Ashur Osman Abukar and Mohamed Ali Borrow were executed by the military court. Their sentence was made on 20th March 2019. According to the World Coalition Against the Death Penalty, at least 24 executions were carried out in 2017, “the majority (21) for terrorism” and “at least 12 of the 24 executions took place under the authority of the federal government (9 for terrorism) and 12 in Puntland, all for terrorism. Both the 24 death sentences and the 24 executions were imposed by military courts, mostly against civilians, except for three death sentences and three executions of men belonging to armed forces in Somalia.” At least eight executions have been carried out so far in this year (2019). The method of executions in Somalia is shooting by fire squad.

4. Trial by military courts

Somalia is a member of the International Covenant on Civil and Political Rights (ICCPR) and the African Charter of Human and People’s Rights. According to article 14 of the ICCPR “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” The UN Human Rights Committee stated that that “the trial of civilians in the military or special courts raise serious problems as far as the equitable, impartial and independent administration of justice is concerned.” It “repeatedly called on countries to prohibit trials of civilians before military courts (ICJ, Pakistan). Furthermore, Principle 29 of the UN Updated Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states that: “The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel.”

The African Commission of Human and People's Rights said: "civilians appearing before and being tried by a military court presided over by active military officers who are still under military regulations violates the fundamental principles of fair trial.....selection of active military officers to play the role of judges violates

the provisions of paragraph 10 of the fundamental principles on the independence of the judiciary (Ghazi Suleiman v. Sudan)." "Military courts should respect the norms of a fair trial. They should in no case try civilians. Likewise, military courts should not deal with offences which are under the purview of ordinary courts."

5. Capital punishment in the Somali Penal Code

The Penal Code has 22 articles punishable to death. Many of these articles are related to political offences such as the "Crimes against the Personality of the Somali State," and includes "Crimes Endangering Public Safety by Force." The following articles in the Penal Code are punishable to death:

Article	Definition
<p>Crimes against the Personality of the Somali State Chapter I: Crimes against the Somali State as an International Person</p>	
<p>Article 184: Attempts against the Integrity, Independence or Unity of the Somali State; high treason)</p>	<p>Whoever commits an act direct to subject the territory of the State [4 Const.] or a part thereof to the sovereignty of a foreign State, or to diminish the independence, or to dissolve the unity of the State [1 Const.], shall be punished with death [94 P.C., 16' Const.].</p>
<p>Art. 185. (Citizen Who Bears Arms Against the Somali State). -</p>	<ol style="list-style-type: none"> 1. A citizen [41 P.C.] who bears arms against the State, or serves in the armed forces of a State at war with the Somali State, shall be punished with imprisonment for life [95 P.C.]. Where he holds a higher command or has a leading role, he shall be punished with death [94 P.C.]. 2. Whoever, being during hostilities [237 P.C.] in the territory of an enemy State, has committed the act having been compelled thereto by an obligation imposed upon him by the laws of that State, shall not be liable to punishment. 3. For the purposes of penal law, the expression «States at war» includes political units which, although not recognised by the Somali State as States, are treated as belligerents [237 P.C.]. An enemy State, has committed the act having been compelled thereto by an obligation imposed upon him by the laws of that State, shall not be liable to punishment.



Article	Definition
Art. 186. (Intelligence with Foreigners For the Purpose of Waging War against the Somali State).	<p>1. Whoever holds intelligence with foreigners in order that a foreign State may wage war or commit acts of hostility against the Somali State, or commits other acts directed to the same end, shall be punished with imprisonment [96 P.C.] for not less than ten years.</p> <p>2. Where war results, punishment of death [94 P.C.] shall be imposed; where hostilities break out, imprisonment for life [95 P.C.] shall be imposed.</p>
Art. 190. (Favouring the Enemy in Time of War). - Whoever, in time of war [237 P.C.],	<p>holds intelligence with foreigners in order to favour the military operations of the enemy [1853 P.C.] to the prejudice of the Somali State, or otherwise to endanger the military operations of the Somali State, or commits other acts directed to the same objects, shall be punished with imprisonment [96 P.C.] for not less than ten years; and, where he attains the object, he shall be punished with death [94 P.C.].</p>
Art. 196. (Destruction or Sabotage of Military Works).	<p>1. Whoever destroys or renders unserviceable, wholly or in part, even temporarily, ships, airplanes, trains, roads, installations, depots or other military works or works assigned to the service of the armed forces of the State, shall be punished with imprisonment [96 P.C.] for not less than eight years.</p> <p>2. Punishment of death) 94 P.C.) Shall be imposed:</p> <ul style="list-style-type: none">a) Where the act is committed in the interest of a State at war [185 P.C.] With the Somali State;b) Where the act has seriously affected the preparation or the efficiency of the State for war, or its military operations.
Art. 198. (Suppression, Falsification or Purloining of Papers or Documents Concerning the Security of the Somali State).	<p>1. Whoever wholly or in part, suppresses, destroys or falsifies, or seizes, purloins or diverts, even temporarily, papers or documents concerning the security of the State or other political domestic or international interests of the State, shall be punished with imprisonment [96 P.C.] for not less than eight years.</p> <p>2. Punishment of death [94 P.C.] shall be imposed where the act has seriously affected the preparation or the efficiency of the State for war, or its military operations.</p>

Article	Definition
<p>Art. 199. (Procuring Information Regarding the Security of the Somali State).</p>	<ol style="list-style-type: none"> 1. Whoever procures information which in the interest of the security of the State, or, in the political, domestic or international interest of the State, ought to remain secret, shall be punished with imprisonment [96 P.C.] from three to ten years. 2. The punishment of death [94 P.C.] shall be imposed where the act has seriously affected the preparation or the efficiency of the State for war, or its military operations. 3. For the purposes of the provisions of this Part, information which ought to remain secret in the political interest of the State shall include any information contained in Government papers not published for reasons of a political, domestic or international nature.
<p>Art. 200. (Political or Military Espionage).</p>	<ol style="list-style-type: none"> 1. Whoever procures, for the purpose of political or military espionage, information which, in the interest of the security of the State, or in the political, domestic or international interest of the State ought to remain secret [199 P.c.], shall be punished with imprisonment [96 P.C.] for not less than fifteen years. 2. Punishment of death [94 P.C.] shall be imposed: <ol style="list-style-type: none"> a) Where the act is committed in the interest of a State at war [185' P.C.] with the Somali State; b) Where the act has seriously affected the preparation or efficiency of the Somali State for war, or its military operations.
<p>Art. 204. (Disclosure of State Secrets).</p>	<ol style="list-style-type: none"> 1. Whoever discloses any information of a secret nature specified in article 199 shall be punished with imprisonment [96 P.C.] for not less than five years. 2. Where the act is committed in time of war [237 P.C.], or has seriously affected the preparation or efficiency of the State for war, or its military operations, the punishment shall be imprisonment [96 P.C.] for not less than ten years.

Article	Definition
	<p>3. Where the offender has acted for purposes of political or military espionage, imprisonment for life [95 P.C.] shall be imposed in the case referred to in the first paragraph of this article; and punishment of death [94 P.C.] shall be imposed in the cases referred to in the second paragraph.</p> <p>4. - The punishments prescribed in the foregoing provisions shall also apply to the person who obtains the information [119 P.C.].</p> <p>5. Where the act is committed with culpa [241 P.C.], the punishment shall be imprisonment [96 P.C.] from six months to two years in the case referred to in the first paragraph of this article, and from three to fifteen years where the act is committed under any of the circumstances referred to in the second paragraph.</p>
<p>Art. 205. (Disclosure of Information the Divulgence of Which Has Been Prohibited).</p>	<p>1. Whoever discloses information the divulgence of which has been prohibited by the competent authorities, shall be punished with imprisonment [96 P.C.] for not less than three years.</p> <p>2. Where the act is committed in time of war [237 P.C.], or has seriously affected the preparation or efficiency of the State for war, or its military operations, the punishment shall be imprisonment [96 P.C.] for not less than ten years.</p> <p>3. Where the offender has acted for purposes of political or military espionage, imprisonment [96 P.C.], for not less than fifteen years shall be imposed in the case referred to in the first paragraph of this article; and punishment of death [94 P.C.] in the cases referred to III the second paragraph.</p> <p>4. - The punishments prescribed in the foregoing provisions shall also apply to the person who obtains the information [205 n. 1 P.C.].</p> <p>5. - Where the act is committed with culpa [24 c, P.C.], the punishment shall be imprisonment [96 P.C.] from six</p>

Article	Definition
	<p>months to two years in the case referred to in the first paragraph of this article, and from three to fifteen years where the act is committed under any of the circumstances referred to in the second paragraph.</p>
<p>Art. 206. (Utilisation of State Secrets).</p>	<p>1. A public officer [240 a P.C.], or a person entrusted with a public service [240 b P.c.], who makes use for his own or another person's benefit of scientific inventions, or discoveries or new industrial devices, with which he is acquainted by reason of his office or service, and which ought to remain secret [199 P.C.] in the interest of the security of the State, shall be punished with imprisonment [96 P.C.] for not less than five years and with fine [97 P.C.] of not less than Sh. So. 10,000.</p> <p>2. - Where the act is committed in the interest of a State at war [185' P.c.] With the Somali State, or where it has seriously affected the preparation or efficiency of the State for war, or its military operations, the offender shall be punished with death [94 P.C.].</p>
<p>Art.211. (Offences against Allied States).</p>	<p>The punishments prescribed in article 190 and the articles following it shall also apply where the crime is committed to the detriment of a foreign State allied or associated with the Somali State for purposes of war.</p>
<p>Art. 221. (Armed Insurrection against the Powers of the State).</p>	<p>1. Whoever promotes an armed insurrection against the powers of the State shall be punished with imprisonment for life [95 P.c.], and, where the insurrection ensues, with death [94 P.C.].</p> <p>2. Persons who participate in the insurrection shall be punished with imprisonment [96 P.C.) from three to fifteen years.</p> <p>3. An insurrection shall be deemed to be an armed insurrection even though the arms [541 P.c.) are merely kept in a place of deposit.</p>



Article	Definition
Art. 222. (Devastation, Pillage and Slaughter).	Whoever, for the purpose of making an attempt against the security of the State, commits an act directed to carry devastation, pillage or slaughter [329 P.c.] into the territory of the State [4' P.C.] or a part thereof shall be punished with death [94 P.C.].
Art. 223. (Civil War).	- Whoever commits an act directed to provoke civil war in the territory of the State [4' P.C.] shall be punished with imprisonment for life [95 P.C]. Where civil war ensues, the offender shall be punished with death [94 P.C.].
Art. 224. (Usurpation of Political Powers or Military Command). -	<p>1. Whoever usurps political power, or persists in its unlawful exercise, shall be punished with imprisonment [96 P.C.] from six to fifteen years.</p> <p>2. - Whoever unlawfully assumes a high military command shall be liable to the same punishment.</p> <p>3. - Where the act is committed in time of war [237 P.C.], the offender shall be punished with imprisonment for life [95 P.C.]; and he shall be punished with death [94 P.C.] where the act has seriously affected the outcome of military operations</p>
Art. 246. (Corruption for Performing an Act Contrary to the Duties of Office). -	<p>1. A public officer [240 a, P.Co] who, for omitting or delaying to do an act pertaining to his office, or performing an act contrary to the duties of his office, receives, for himself or for a third party, any sum of money or any other benefit, or accepts the promise thereof, shall be punished with imprisonment [96 P.Co] from two to five years and with fine [97 P.C.] from Sh. So. 3.000 to 20.000.</p> <p>2. The punishment shall be increased [118 P.C.] where the act results in:</p> <ul style="list-style-type: none">a) The granting of public employment, salaries, pensions or honours, or the stipulation of contracts which are of interest to the Administration to which the public officer belongs;b) favouring or prejudicing a party in a civil, criminal or administrative proceeding.

Article	Definition
	<p>3. - Where the act results in the sentencing of a person to imprisonment for life (95 P.c.) or imprisonment [96 P.c.], the punishment shall be imprisonment (96 P.C.) from six to twenty years and fine of not less than Sh. So. 25.000. Where the act results in a sentence of death [94 P.c.]. the punishment of imprisonment for life [95 P.C.] shall be imposed.</p> <p>4. Where a public officer [240 a, PoC.] receives the money OJ the benefit for having acted contrary to the duties of his office, or for having omitted or delayed an act pertaining to his office, the punishment shall be imprisonment [96 P.c.] from one to three years and fine [97 P.C.] from Sh. So. 1.000 to 10.000.</p>
<p>CRIMES AGAINST PUBLIC SAFETY CHPATER ONE: Crimes Endangering Public Safety by Force</p>	
<p>Art. 329. (Carnage).</p>	<p>1. Whoever, other than in the cases referred to in article 222, with the intention of causing death, commits any act so as to endanger public safety, shall be punished with imprisonment [96 P.C.] up to fifteen years; where the act results in the physical injury of any person [440 P.C.], the punishment shall be imprisonment for life [95 P.C.]; where the act results in the death of any person the punishment of death [94 P.C.] shall be imposed.</p> <p>2. - The term «endangering public safety,) means exposing the public to the danger of death [434 P.C.] or physical injury [440 P.C.].</p>
<p>CHAPTER TWO: Crimes Endangering Public Safety by Fraud</p>	
<p>Art.334. (Epidemies).</p>	<p>Whoever causes an epidemic by diffusing noxious germs shall be punished with imprisonment for life [95 P.C.]. Where death of any person results from such act the punishment of death [94 p.e.] shall be imposed.</p>



Article	Definition
Art. 335. (Pollution of Water and Food). -	Whoever pollutes water or any substance which is used for food before, it has been distributed or has reached the consumer, shall be punished with imprisonment [96 p.e.] for not less than fifteen years. Where death of any person results from such act, the punishment of death [94 P.c.] shall be imposed.
Art. 434 (Murder)	Whoever commits murder shall be punished to death.
Art. 436 (Death caused to a person with his own consent)	<ol style="list-style-type: none">1. Whoever causes the death of a person with the latter's consent, shall be punished with imprisonment from six to fifteen years.2. The offender shall be punished with death where the act has been committed:<ol style="list-style-type: none">a. Against a person under the age of eighteenb. Against an insane personc. Against a person his consent has been obtained by the offender by violence, threat, suggestion or fraud.

6. Recommendations

To the government of Somalia:

- Adopt moratorium and stop executions;
- Try accused persons in civilian courts and stop prosecutions by military courts;
- Enact a law rebuilding the judiciary system of Somalia;
- Adopt fair trial principle as enshrined in the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights;
- Change the Penal Code and enact a criminal law that is compatible with the international human rights law.

To the government of Somaliland:

- Adopt moratorium and stop executions;
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- Change the Penal Code and enact a criminal law that is compatible with the international human rights law.



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