POLICY ANALYSIS

Reclaiming the Constitutional Promise: The Imperative for Penal and Prison Reform in Somalia

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This comprehensive policy analysis establishes the legal, socio-political, and operational foundations for OPR's nationwide legislative advocacy campaign. In an era marked by state reconstruction, addressing the systemic fragility of Somalia's justice system is no longer a secondary luxury; it is the baseline requirement for authentic rule of law, peacebuilding, and human rights compliance.

1. The Current Conjunction: Why Reform Cannot Wait

As the Federal Government of Somalia advances its state-building agenda, political updates and security overhauls dominate national discourse. However, an invisible crisis unfolds continuously behind the walls of the country's detention facilities. The penal and prison architecture of Somalia remains stuck in a dangerous hybrid state—relying on a colonial-era 1962 Penal Code, under-resourced paramilitary custodial forces, and counter-terrorism security sweeps that frequently bypass basic constitutional protections. This mismatch between legal theory and practice undercuts state legitimacy, compromises local counter-extremism work, and leaves thousands of individuals outside the protection of the law.

For the Organization for Prisoners' Rights (OPR), publishing this detailed analysis now is a matter of strategic urgency. Somalia is currently building out its permanent federal structures, reviewing its constitutional frameworks, and entering new defense agreements with international partners. If prison and penal reforms are not explicitly tied to these foundational security architectures today, abusive practices will become permanent structural features. Reform is not simply a matter of compassion; it is a clear legal, security, and institutional requirement for the survival of a legitimate Somali state.

2. The Legal Vacuum: Decolonizing and Modernizing the Penal Code

The primary source of systemic injustice in Somalia is the complete absence of a modernized, compliant criminal code. The active Somali Penal Code was enacted in 1962, combining Italian colonial frameworks with early independence administrative structures. It is a text written for a completely different century, missing modern protections against state abuse, international human rights treaties, or alternative carceral frameworks.

The Criminal Definition Deficit

The most glaring flaw in the domestic penal code is the absolute absence of an official criminal definition of torture. While the Provisional Federal Constitution explicitly outlaws torture under Article 15, the actual penal code lacks any enforceable mechanism to indict, try, or sentence a state agent for inflicting physical or psychological torture. This allows security agencies like NISA to operate with structural impunity during interrogations. Confessions obtained under extreme physical duress remain regular features of security court convictions because the code lacks an absolute exclusionary rule.

Criminalising Impoverishment and Displacement

Furthermore, the 1962 code relies heavily on the criminalisation of low-level status offences. Archaic charges such as ‘vagrancy’, ‘loitering’, and ‘public nuisance’ are systematically weaponised by urban police forces. In practice, these laws target the country’s most vulnerable populations—specifically Internally Displaced Persons (IDPs), street children, and informal labourers. This creates a destructive pipeline that fills overcrowded urban centres like Mogadishu Central Prison (MCP) with non-violent individuals who have committed no recognisable crime, straining state budgets and destroying trust in local law enforcement.

3. The Custodial Crisis: From Paramilitary Control to Civilian Rehabilitation

Somalia’s detention centres are administered by the Somali Custodial Corps (SCC). While structurally separated from the armed forces, the SCC operates as a deeply underfunded paramilitary organisation rather than a modern, human-rights-focused corrections agency. This operational structure leads directly to severe structural failures across all active facilities.

The Collapse of Custodial Safety Baselines

As documented consistently by OPR field monitoring, conditions inside facilities such as Mogadishu Central Prison (MCP) and the Mogadishu Prison and Court Complex (MPCC) regularly fall below international human dignity standards. Severe overcrowding following urban security operations results in a complete collapse of health and sanitation baselines. Cells designed for fixed capacities hold triple their intended numbers, creating environments where disease outbreaks—specifically tuberculosis and cholera—spread rapidly, especially during peak rainy seasons.

Because the federal budget fails to provide adequate operational funding to the SCC, the state has effectively abandoned its structural obligation to feed and care for its prisoners. Inmates are forced to rely almost entirely on their families and clan networks to bring them basic food, clean water, and necessary medical supplies. For individuals who are displaced, lack family nearby, or belong to marginalised minor clans, this absolute reliance results in severe malnutrition and a total lack of medical care, turning a standard custodial stay into a life-threatening ordeal.

The Failure of Segregation

Compounding these harsh conditions is the systemic failure to enforce legal separation guidelines. Due to infrastructure limits and a lack of trained intake staff, pre-trial detainees are regularly mixed directly into general populations with convicted criminals. This practice occurs across the southern and central regions, violating the absolute presumption of innocence. Individuals who have not been

charged or tried are housed alongside hardened offenders, driving institutional radicalisation and escalating the human rights crisis.

4. The Exploitation of Minor Violations: Decoupling Children from the Security Architecture

The most critical human rights failure within the current system involves the treatment of minors. UN monitoring mechanisms have verified thousands of grave violations against children, including unlawful recruitment and arbitrary deprivation of liberty for alleged ties to insurgent groups like Al-Shabaab. In many cases, children who were forced or coerced into armed factions are processed through the standard adult military architecture rather than protective civilian legal channels.

Security forces, including the Somali National Army (SNA) and NISA, frequently hold minors in adult military brigs for long periods without legal representation or contact with outside families. Treating children as national security threats rather than victims of conflict violates the UN Convention on the Rights of the Child (CRC), which Somalia ratified in 2015. It also plays directly into the propaganda of insurgent groups, who use pictures of jailed children to damage the state's international legitimacy. True security requires a complete legal decoupling of juvenile justice from the military command, moving minors into civilian, rehabilitation-focused care centres.

5. The Accountability Gap: Sovereign Immunity and the Path to Institutional Trust

Under current administrative practices, the state operates behind an implicit shield of sovereign immunity. Victims of arbitrary arrest, extended pre-trial detention, or physical torture have no domestic legal path to seek civil damages or formal state accountability. When an individual is held for years without a trial and eventually released without a charge, they are sent back to their community with zero financial compensation, broken health, and no systemic remedy.

This accountability gap fuels a deep cycle of community grievance. When state security organs like NISA or the police commit abuses without facing consequences, communities lose faith in the formal justice system. This institutional vacuum forces citizens to turn to parallel traditional structures or insurgent courts to resolve civil disputes, directly undermining federal governance. True national stability cannot be achieved solely through military action; it requires building a transparent, accountable justice system that respects individual rights and provides clear, legal remedies for state misconduct.

6. Conclusion: OPR’s Vision for a Rights-Based Justice System

The evidence compiled in this analysis points to a clear reality: Somalia’s current penal and prison models are structurally unsustainable and legally broken. Continuing with the current approach—relying on occasional international statements of concern while leaving broken colonial laws and abusive security structures in place—will only deepen instability and hinder genuine national reconstruction.

As a leading civil society voice, the Organization for Prisoners’ Rights presents this analysis as a call to action. The Federal Government, regional state administrations, and international partners must work together to turn these recommendations into concrete laws. True rule of law is not demonstrated by the severity of a state’s prisons, but by its commitment to justice, due process, and human dignity for every individual under its custody.

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