



Assessment of the Prison System in Mogadishu/South Central Somalia

September 2012

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United Nations Political Office for Somalia



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Assessment of the Prison System in Mogadishu/South Central Somalia

Introduction

Notwithstanding the on-going conflict and persistent economic distress, and despite the continued presence of Al Shabab militias in the Somali capital, a degree of improvement has taken place in the security situation in Mogadishu over the past months, which needs to be stabilized with more concrete steps and actions. Even though focused interventions from the international community are supporting the activities of various national justice institutions, proper administration of justice is still lacking, respect of law and order is often compromised, and the overall capacity of members of the justice sector to ensure that the justice system is accessible to the population is very limited or often non-existent. Whereas there is an urgent need to reform the courts system, prosecutions services and policing in Mogadishu and South Central Somalia in general, the situation of prisoners and detainees must also be taken into serious consideration without further delay. As explained in more detail in the report, deficiencies in the administration of justice system result in arbitrary and unlawful detention across all categories of inmates. The situation is aggravated by the lack of alternatives to detention and the recourse to detention also for minor offences. Once detained, the living conditions of prisoners and detainees fall well below the standards identified in international human rights law as well as in the laws of Somalia.

In 2011, due to a severe explosion of epidemic cholera at the Mogadishu Central Prison and based upon a request made by the members of the United Nations Country Team (UNCT) for Somalia, the United Nations Office on Drugs and Crime - Regional Office for Eastern Africa (UNODC ROEA)

facilitated the establishment and coordinated the activities of a group of experts to assess the prisons sector in South Central Somalia/Mogadishu. Consequently, UNODC ROEA developed a programme to support the reform of the corrections sector and the refurbishment of Mogadishu Central Prison.

A team composed by UN experts from UNODC, the Office of the High Commissioner for Human Rights (OHCHR)/UNPOS Human Rights Unit and the United Nations Children's Fund (UNICEF) undertook the present assessment through a series of visits to the Mogadishu Central Prison and meetings with Government officials from various institutions within the criminal justice sector, including representatives from the Ministry of Justice, Religious Affairs and Endowment, Custodial Corps, and the Judiciary. Members of the assessment team also consulted with representatives of the Civil Society and interviewed prisoners detained at the Mogadishu Central Prison.

Overall purpose of this assessment (see Annex I) was to review the applicable legislative framework to prisons, the situation of prisons and community-based alternatives to prisons, as well as the conditions of imprisonment for sentenced prisoners and prisoners awaiting the adjudication of their cases. For reasons of security and inaccessibility to most of the areas which are not under the influence of Transitional Federal Government (TFG) at the time of the completion of the present report, the members of the UN team could only visit the Central Prison in Mogadishu.

The Ministry of Justice, Religious Affairs and Endowment, and the Custodial Corps have not yet developed a comprehensive strategy for prison reform. A plan for strengthening the capacity of the prison system is urgently required as part of a broader plan to reform the whole of the justice

sector. As further described in the analysis of the assessment's findings and recommendations, Agencies and Organizations of the UNCT urge the implementation of a prioritized and sequenced set of activities aimed at achieving immediate as well as long term results to clarify and improve key areas such as: applicable legal and regulatory framework, development of Standard Operating Procedure for the management of the facility; information management systems, including through the development of an automated database on prisoners and keeping of records ;improve the conditions of the existing facility in Mogadishu, with the priority objective of reducing overcrowding and ensuring access to water and sanitation; improve the treatment of prisoners, through staff development and training, as well as establishing healthcare and rehabilitation programs.

Overview of the Applicable Legal Framework

A range of binding international human rights instruments to which Somalia is a party relate directly to imprisonment. These include: The International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Regrettably, Somalia has yet to adhere to the Convention on the Rights of the Child and its Optional Protocols. In addition to the above, various other instruments deal specifically with prisoners and conditions of detention. These include: the Standard Minimum Rules for the Treatment of Prisoners (1957); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); the Basic Principles for the Treatment of Prisoners (1990), the Standard Minimum Rules for the Administration of Juvenile Justice (1985), the UN Rules for the Protection of Juveniles Deprived of their Liberty

(1990), the UN Guidelines for the Prevention of Juvenile Delinquency (1990), and the UN Standard Minimum Rules for Non-custodial Measures (1990).

Such human rights instruments have received a limited degree of implementation in Somalia. Domestic legislation that is compliant with international norms remains often not complied with.

At domestic level, for reasons of expediency, this assessment limits its purviews to the **2004 Transitional Federal Charter** and the “1963 Constitution of the Somali Republic” (hereunder the “**1961 Constitution**”) and other relevant substantive laws and procedural codes. As a result, no regulations and/or any other secondary legislative document were evaluated for the purpose of this assessment and report.

In addition, at the time of completion of the assessment and drafting of the report, various initiatives from the United Nations¹ to review and update the existing legislative framework regulating the prisons regime in Somalia are well under way. However, the assessment was limited to the applicable legislative framework and did not consider useful to analyse any legislative document which was still at a draft status and/or not enacted.

Article 16, Chapter 5 (Protection of Fundamental Rights and Freedoms of the People), of the 2004 Transitional Federal Charter states that “no person shall be liable to any form of detention in prison or other restrictions of personal liberty except when apprehended *flagrante delicto* or pursuant to any act of the competent judicial authority”². It then affirms that “as is explicitly defined by any law, any person arrested for suspicion or restricted

1. Law Reform Programme, UNODC Counter Piracy Programme.

2. The 2004 Transitional Federal Charter, Chapter 5, Article 17, Paragraph 5.

from his/her personal liberty, shall have access within 48 hours to competent judicial authority and confirmed by it within the time prescribed by law”³.

Article 17 of the 2004 Transitional Federal Charter, which regulates the rights of the citizens during legal proceedings, prescribes that “every person detained, imprisoned or restricted shall be permitted the right to defend himself/herself in a court in person or communicate with his/her relatives, lawyer of his/her own choice whenever he/she requires”.

Title I of the 1961 Constitution contains various provision on the “fundamental rights and duties of man”, including specific provisions which are directly and indirectly relevant to issues related to general restriction of the freedom of movement of an individual.

Both Article 16⁴ of the 2004 Transitional Federal Charter and Article 17 of the 1961 Constitution states that “no person shall be liable to any form of detention or other restriction of personal liberty except when apprehended in flagrante delicto or pursuant to an act of the competent judicial authority, stating the grounds thereof, in the cases and in the manner prescribed by law.” The same article continues by stating that “in each case detention or restriction of personal liberty, the reasons for the measure shall be communicated to the person concerned without delay”. The definition of “flagrante delicto” is provided by Article 37, Section II, Book I of the 1963 Criminal Procedure Code.

Article 18 of the 1963 Constitution provides for “guarantees in cases of restriction of personal liberty” by prohibiting “any physical or moral violence

3 The 2004 Transitional Federal Charter, Chapter 5, Article 17, Paragraph 6.

4 The 2004 Transitional Federal Charter, Chapter 5, Article 17, Paragraph 6.

against a person subject to restriction of personal liberty”, which would be otherwise punished as a crime in accordance with applicable laws.

The 1963 Criminal Procedure Code⁵ and its subsequent amendments made in 1972 contain various provisions regarding detention and imprisonment of accused and sentenced individuals at different stages of a criminal process.

Book I, Part II, Chapter I regulates the different methods of “securing the appearance of an accused person in court”⁶, including the execution of an arrest with and without a warrant from a competent authority while ensuring, in principle, the application of procedures to safeguard the fundamental right of personal liberty of an individual⁷. Articles 46⁸ and 47⁹ regulate the issue of remand of an accused person to custody and the duration of such custody respectively in accordance with a lawful order issued by a competent Judge or by a competent Court.

Finally, Book IV, Part II regulates the enforcement of sentences and other measures passed by competent authorities, including fines¹⁰, imprisonment¹¹ and death sentence¹².

5 The Criminal Procedure Code was enacted by Legislative Decree No. 1 of 1st June 1963 and came into force on 31st March 1965.

6 1963 Criminal Procedure Code, Articles 28-33 (Arrest in General), Section I, Chapter I, Part II, Book I; *Ibid.*, Articles 34-39 (Arrest without a Warrant), Section II, Chapter I, Part II, Book I; *Ibid.*, Articles 40-35 (Arrest with a Warrant), Section II, Chapter I, Part II, Book I.

7 *Ibid.* Articles 65-67, Section III, Chapter III, Part II, Book I.

8 *Ibid.* Article 46 (Remand of Accused Person to Custody), Section IV, Chapter I, Part II, Book I.

9 *Ibid.* Article 47 (Duration of the Custody before Trial), Section IV, Chapter I, Part II, Book I.

10 *Ibid.* Article 250 (Execution of Fines), Section I, Chapter II, Part II, Book IV.

11 *Ibid.* Article 249 (Execution of Sentence of Imprisonment), Section I, Chapter II, Part II, Book IV Code.

12 *Ibid.* Article 248 (Execution of Death Sentence), Section I, Chapter II, Part II, Book IV.

Also the 1964 Penal Code¹³ contains a number of provisions concerning the execution of a sentence of imprisonment. First of all, the 1964 Penal Code defines the applicable sentence to any individual who is found guilty of an offence at the end of the criminal proceeding, including death penalty¹⁴, imprisonment for life¹⁵, short and long term imprisonment¹⁶ and imposition of a fine¹⁷. Chapter V¹⁸ of the 1964 Penal Code regulates the execution of punishments, drawing a clear distinction of the applicable regime to various offenders. Article 136, paragraph (5) requires inter alia that female prisoners to be kept completely separately from male prisoners.

The current Prison Law regulating the regime of detainees and prisoners in Somalia was drafted and adopted in 1972 (hereinafter referred to as the 1972 Prison Law¹⁹).

The 1972 Prison Law contains 74 articles regulating the establishment and administration of prisons²⁰, treatment and general welfare of prisoners²¹, disciplinary and penal provisions²², discharge and assistance to prisoners²³, conditional release on license²⁴, prisons' visits²⁵, offences in relation to

13 The Penal Code was enacted by Legislative Decree No.5 of 16th December 1962 and came into force in 1964.

14 1963 Penal Code, Article 94 (Punishment of Death), Chapter II, Book I.

15 Ibid. Article 95 (Imprisonment for Life), Chapter II, Book I.

16 Ibid. Article 96 (Imprisonment for Crimes), Chapter II, Book I.

17 Ibid. Article 97 (Fine for Crimes), Chapter II, Book I.

18 Ibid. Articles 136- 142, Chapter V, Book I.

19 Law No. 7 of 30 December 1971, published in the Official Bulletin, Supplement No. 2, Volume 1 of 15 January 1972.

20 Ibid. Articles 2- 14, Parts II and III.

21 Ibid., Articles 15- 45, Chapters 1-10, Part IV.

22 Ibid., Articles 46-58, Part V.

23 Ibid., Articles 59-60, Part VI.

24 Ibid., Articles 61, Part VII.

25 Ibid., Articles 62, Part VIII.

prisons and prisoners²⁶, and development of secondary legislation and administrative measures²⁷, including Regulations and standing orders.

The Custodial Corps are accountable to the Ministry of Justice, Religious Affairs and Endowment of the Transitional Federal Government of Somalia. The Ministry of Justice, Religious Affairs and Endowment has the powers and duties to ensure the proper carrying out of federal prisons. The Ministry of Justice, Religious Affairs and Endowment is also required inter alia to provide policy direction and capacity building to enhance the effectiveness of the prisons and provide appropriate support to the Somali Custodial Corps. Regrettably, the Somali authorities did not provide the members of the assessment team with a copy of any legal document regulating the overall mandate of the Custodial Corps.

Profile of the Prison Population

As of today, the Central Prison in Mogadishu is the only prison that is under the responsibility of the Ministry of Justice, Religious Affairs and Endowment of the Transitional Federal Government of Somalia. In the past, the Ministry of Justice, Religious Affairs and Endowment used to administer a reformatory located in Afgooye. This premise was utilized to host children in contact with the law and support their rehabilitation and reintegration within society. As the reformatory is located in an area under Al Shabab's control, there is no reliable information on how it is utilized. In addition, in Kaysaney there used to be another building serving as a temporary prison to accommodate convicts from other prisons. Article 3 of the 1972 Prison Law regulates the

26 Ibid., Articles 63-70, Part IX.

27 Ibid., Articles 71- 74, Part X.

conditions for the establishment and admission to temporary prisons which includes inter alia situation of overcrowding or epidemic diseases.

At the end of July 2012, the prison population was constituted by 950 individuals detained at the Mogadishu Central Prison, versus the 1354 inmates detained in the course of 2011. Representatives of the Ministry of Justice, Religious Affairs and Endowment mentioned that approximately 25% of all inmates were convicted by a military court, including all female prisoners. Presently there are no foreigners detained in the Mogadishu Central Prison.

The existing prison population could be divided as follows:

- a 14 women (3 on remand and 11 convicted);
- b 39 juveniles (23 convicted and 16 on remand);
- c 61 individuals on death row (all males);
- d 717 prisoners sentenced to imprisonment ranging from five years to life imprisonment (11 females, 23 juveniles and 706 males);
- e 135 individuals detained on remand (116 males, 3 females and 16 juveniles);

In 2011 the individuals sentenced to death were fifty. Representative of the Ministry of Justice, Religious Affairs and Endowment clarified that all the sixty-one individuals currently detained on death row belonged to Al Shabab. In 2011 one female woman, who was sentenced to death for having sold "ammunitions" to Al Shabab and being part of the terrorist group, was granted pardon²⁸ by President Sheik Sharif Sheik Ahmed.

28 Article 75, paragraph c) (Power and Duties) of the 1961 Constitution states that "The President of the Republic shall.....c) grant pardon and commute sentences". Article 149, Chapter II, Book I of the 1963 Penal Code states that "...pardon shall constitute condonation, wholly or in part, of the punishment imposed or shall commute it to another kind of punishment fixed by Law".

In addition to Article 136, paragraph (5) of the 1972 Penal Code, also Article 22 of the 1972 Prison Law expressly requires that female and male prisoners should be kept separated. Article 23 of the 1972 Prison Law regulates separation of classes of prisoners and provides for a detailed list of categories of prisoners, differentiating between individuals detained on remand and those already convicted by a final and irrevocable sentence, juveniles versus adults, first offenders and recidivists.

Separation between women and man was confirmed during the assessment at the Mogadishu Central Prison. However, such separation de facto does not exist between adults and juveniles in detention, despite this being expressly required by Law²⁹. Adults on remand are usually kept separate from those who are serving a sentence. However, the same is not the case for women and juveniles as both remanded and sentenced are not kept separated in their respective wings. In addition, there is no clear separation between individual sentenced by military courts and those convicted by a decision of a civilian court; same applies for those sentenced or tried on charges of national security offences and common crimes. This situation obviously poses a serious concern in terms of both internal security and rehabilitation of prisoners.

Somali authorities asserted that all prisoners are detained exclusively on the basis of the provision of a judicial warrant, in accordance with the 1963 Criminal Procedure Code and the 1971 Prison Law. Admission of prisoners will be addressed later on in the report. However, it's worth mentioning that Article 15, paragraph 1, of the Prison Law states that "no person shall

²⁹ Article 5, paragraph 3, of the Juvenile Courts and Reformatories Law No. 13 of 8 March 1970

be admitted into a prison unless accompanied by a court warrant or order of detention by a competent authority". During the assessment the Commanding Officer of Mogadishu Central Prison argued that there are no prisoners or detainees admitted through other procedures. He also explained that courts orders are carefully checked upon receiving an individual at the Prison. The Commanding Officer also clarified that at the moment court warrants and orders are kept in his office, folded separately but stored without a clear and proper filing system. In addition, such documents are not kept in a safe and/or stored in any other secure place.

Prison Management

Facilities (Infrastructure)

The Mogadishu Central Prison was constructed by the Italian colonial authorities in the early 1930's in the Hamarweyne District. The Mogadishu Central Prison, located at a relatively high position with its southern border looking out to sea (GPS data: N 020 01' 37.9" E 0450 20' 06.7"), used to be the only prison facility serving Somalia before other prisons were subsequently developed in other parts of the country. The Prison staff residences are bordered to the North of the Mogadishu Central Prison with De Martino Hospital to the East, Mogadishu Port and Governmental buildings to the west and Sea Port and Indian Ocean to the South. Currently, the only functioning section of the Mogadishu Central Prison is the central section which comprises of the following premises:

- a Prison Commander Offices;
- b Prison Management Offices;
- c Segregation Section;

- d Rehabilitation Center (*Daryeel*);
- e Male section;
- f Female section;
- g Political detainee section (*Asab*);
- h Kitchen block.

Other important sections such as, the long term inmates Prison section and juveniles section are not functioning. The long term inmates section comprises three detention halls, two of which are in total ruin. The juveniles section initially located on the outside of the fence wall near the main entrance gate is also completely dilapidated. The Mogadishu Central Prison compound also suffers from a dilapidated external perimeter fence wall, guard house/shelter and staff accommodation buildings.

As mentioned earlier, the Central Section comprises of the administration buildings, death row inmates cells, detention halls and kitchen. All these buildings are in a serviceable condition but will require significant rehabilitation works, including replacement of roofs, façade rendering, new doors and windows and electrical and sanitary fittings. The kitchen will require major rehabilitation and provision of new cooking and food preparation equipment.

The so-called rehabilitation centre consists of a facility with cells, an office, a pharmacy room, external showers and toilets. Also this structure requires major renovation works, involving replacement of roofs, façade rendering, new doors and windows and electrical fittings.

Mogadishu Central Prison has no source of electricity and almost exclusively depends on an unreliable and expensive supply from a private power

company, with no provision for emergency supply. Improvements to the electrical supply for the prison will most likely consist of supplying and installing new generators, re-design and replacement of electrical distribution system with appropriate new electrical switchgear.

The existing structures in the central, political detention and female sections require light to medium rehabilitation works, while the long term detention halls and peripheral buildings shall require extensive rehabilitation or demolition (to make safe) where indicated. In addition to construction and renovation works, Mogadishu Central Prison urgently requires provision of equipment and material for both prisons personnel and inmates.

Admission and Assessments

Mogadishu Central Prison does not seem to have an adequate initial prisoner assessment and intake process. As already indicated in the previous paragraphs, no individual shall be admitted into a prison unless accompanied by a court warrant or order of detention by a competent authority.

The process for the admission and initial assessment of a prisoner is regulated in Chapter 1 of the 1971 Prison Law³⁰. Article 10 provides the prisons authorities with the power to take pictures and photographs of inmates at the moment of admission to a prison.

During visits at Mogadishu Central Prison the Commanding Officer showed the assessment team the book currently used as a registry to register the arrival of an individual at the prison. Basic information such as date of arrival, name, number of warrant are recorded, in most cases not exceeding two

³⁰ Articles 15, 19, 20, and 21 of the Law No. 7 of 30 December 1971, published in the Official Bulletin, Supplement No. 2, Volume 1 of 15 January 1972.

lines for each prisoner. The use of proper prisoner registers was discontinued as, it was argued, the prison service cannot afford buying them.

However, the assessment team determined that individuals upon arrival at the prison are not provided with a clear set of rules and regulations, including information of the day to day activities at the prison, a list of conduct or acts that constitute disciplinary offences, punishments that may be imposed, etc. In addition, staff which may be on duty at the arrival of a detainee or a prisoner in the reception area have not been specially trained to undertake the admission process. A very basic and rudimentary "classification" process is undertaken upon arrival at the prison after which the individual is assigned to one of the two cells operating in the prison. No records are kept about each individual as the prison staff complained that they do not have sufficient stationary and material to establish a proper archive. The back side of the warrant or judicial order is usually used as a personal file for the inmate, including medical records, prison leaves, transfers, date of eligibility for conditional release, disciplinary measures. Besides the Commander's office, there is no other room which could be used to safely store any of this information. As a result, there is a serious issue in terms of security and confidentiality. This is certainly an area where the capacity the Custodial Corps shall be strengthened.

Living Conditions

There are certain basic physical requirements that must be met if the state is to comply with its obligation to respect the prisoner's human dignity and fulfil its duty of care. These include adequate provision of accommodation, hygienic conditions, clothing and bedding, food, drink and exercise. In the Somali Prison Law the issue of living conditions of prisoners and detainees

is regulated by Article 27 ("food for prisoners"), Article 28 ("Clothing of prisoners") and Article 29 ("bedding of prisoners").

Prisoners' living conditions in Mogadishu Central Prison fall short of meeting minimum international and national standards. As far as the male section is concerned, the Prison capacity is calculated at 50 persons per room. Each room measures 15 x 20 m. and therefore about 300 meter square approximately. Each room currently hosts 120 male inmates. The situation is quite different in the female section where the total capacity is 50 individuals per room. Therefore, at the moment, the issue of overcrowding does not affect female detainees; conversely, it constitutes major concerns for the male prison population, to the point that inmates cannot sleep at the same time for lack of space. The situation is at its worst in the children wing, where 32 children are kept in a narrow room that only has space for sitting them at the same time.

Along with overcrowding, access to clean drinking water is among the most pressing needs that require urgent attention from the international community.

Mogadishu Central Prison has no source of safe and clean drinking water. Of the two boreholes that used to provide water to the prison, only one is functioning, providing daily eight cubic meters of water that is however too saline for human consumption. These services will require further consideration and may necessitate the provision of a site borehole, water storage and septic tanks and associated piping works.

Dependent on the site ground water characteristics, there may be a requirement for the provision of a small desalination plant to service drinking and food preparation water requirements only. At the moment, about

3,500 litres of clean drinking water are water trucked to the prison daily, at a cost of about 0,005 USD per litre. The amount of water provided is absolutely inadequate to meet the needs of the hosted population, as this water is used for all purposes, including cooking, drinking, hygiene, ablution for prayer, etc.

Those interviewed for this assessment confirmed that the water water-trucked is “clean and potable” but no testing has ever been conducted by the prison authorities.

In addition, each dormitory is provided with a washing corner and one toilet to be shared by all inmates. Water for both is taken directly from the borehole. However, as the sewer system also discharges directly into the sea, this creates a serious problem in term of hygiene and transmittable diseases.

Dormitories do not provide any space for the individual. No privacy is granted to inmates when they visit the only toilet and washing corner available in each room. There is not space for inmates to keep their personal belongings. Inmates sleep on the floor at night and remain confined in the same space during the day. No beds and/or mattresses are provided to the prisoners. Also, blankets and sheets are missing.

Cleaning of the dormitories and the prison in general is the responsibility of inmates which are divided in teams of (how many individuals). Inmates are dressed with personal clothes, some of which are provided by family members or relatives of fellow inmates.

Access to light and air varies in accordance with the location of the cell. For the cells that face the main courtyards, the main source of light and air is

the main door that is blocked by a metal grill. A second window is generally positioned on the back wall. The heat summed to the number of prisoners crammed in each cell for around 20 hours per day renders air circulation difficult. The situation is much worst in the cells where children and inmates under disciplinary proceeding are kept, as both doors face a corridor.

Electricity is not available in the dormitories.

As reported by representatives of the Custodial Corps, each day one dollar per prisoner is allocated to purchase food. Food is distributed to the prisoners three times a day. Prisoners may leave the dormitories to receive their food. During the morning (approximately around 5 am) prisoners receive a portion of bread and tea, at lunch time (noon) prisons staff distributes a cup of rice and beans while dinner (around 5 pm) consists of a bowl of maize and (?).

As prison authorities provide inadequate amount and variety of food to inmates, inmates' diet needs to be supported by food prepared by family members of inmates, delivered to the prison and subsequently distributed by prison staff. As the food provided by the Custodial Corps is not always sufficient both in terms of quantity and nutritional value, inmates receiving food from their relatives usually share their food with other prisoners.

Food is usually prepared outdoor by a selected team of prisoners. There is no specific rotation for this assignment and every day the same prisoners end up preparing food for all inmates.

Health Care

Articles 30 and 31 of the 1971 Prison Law regulate general access to health care prisoners and detainees. Article 30 requires the establishment of *"infirmary or proper place for the medical care of prisoners in every*

prison and other penal institution". Article 31 states that a medical officer, responsible for the health and medical care of every prisoner, "shall be provided in every prison and other penal institution".

Overall medical services require significant improvement. Sanitation is a problem in Mogadishu Central Prison and efforts to prevent communicable diseases are very often hampered by a lack of resources and inadequate operational policies. The prevalence of various diseases, including cholera, TBC, malaria, intestinal infections and parasites remains a serious problem in the Prison. We were not provided with any data on the prevalence of HIV/AIDS in the Prison. Testing is obviously voluntary but representatives of the Ministry of Justice, Religious Affairs and Endowment and Custodial Corps confirmed their support in letting the UN accessing prisoners for HIV testing and in offering health information to prisoners.

Mogadishu Central Prison does not have any form of medical care capacity or such capacity is incredibly limited. Shortage of the required equipment and the shortage of trained and qualified staff to operate these facilities is one the main issues of concern. Prison officials said that there are medical records kept and updated for each inmate. Most likely the arrest warrant is utilized to take notes of the medical history of inmates, including prescriptions and other treatment provided to the individual when possible and available.

Currently there are no doctors stationed in Mogadishu Central Prison. Medical services are provided by five nurses, three females and two males. Female nurses can exclusively assist women prisoners. The assessment team could not test the skills and professionalism of these nurses. However, Prison authorities affirmed that some of these nurses attended a medical school in Mogadishu over twenty years ago.

There is no infirmary available at the Prison and no specific medication to treat prisoners. A first aid box is the only medical supply available at the Prison to treat any possible kind of illness and disease for a prison population of 722 individuals.

We were not able to obtain much information on the treatment of prisoners with mental or intellectual disabilities. During Siad Barre's regime, there was a public hospital dedicated for taking care of individuals with mental and intellectual disabilities. This hospital was also used as a detention facility to host people charged with criminal offences and declared unfit to stand trial by a competent authority.

Most of the people interviewed did not identify drug use in prison as an issue of concern. Prisoners' drug addiction issues were apparently also quite limited. Injection drug use in prison is apparently infrequent but also in this case Prisons officers did not provide any specific information.

Contact with Outside World

Contact with the outside world does not appear to be taking place on regular basis and sufficiently. We received very little information about this aspect of the prison regime. It would seem obvious, however, that such contacts should be maximized in an effort to prepare prisoners for their release and prepare them for a successful reintegration into the community.

Encouraging and facilitating contacts between family members and prisoners is expressly required by Law³¹, including through personal visits and communication by mail³².

31 Ibid, Article 33.

32 Ibid, Article 35.

Representatives of the Ministry of Justice, Religious Affairs and Endowment affirmed that staff of legal aid organizations such as Somali Women Development Centre (SWDC), Somali Women Layers Association (SWLA), Consortium of Grass Root Women Organizations (COGWO) and Community Children organization (COCO, mainly local NGOs funded through donors and international organizations, visit inmates on daily basis and without any specific restriction. However, prison authorities could not provide reliable information on the number of prisoners who receive legal assistance.

In principle, inmates are allowed to meet with visitors between 8 am and 5 pm, each day, following express authorization by the Commander of the Prison. Usually, visits take place in dedicated rooms in which there is no separation between prisoners and visitors. However, visits take place at the presence of guards to ensure that no illegal goods or items are smuggle inside the Prison. There have been instances in the past when drugs were delivered to inmates. The representative of the Judiciary confirmed that conjugal visits, even though not expressly forbidden by the Prison Law or any other applicable law are still not permitted inside the Prison.

In principle, administrative instructions and standing orders allow for prisoners to write or receive letters from the outside. The use of mobile phones is strictly forbidden for detainees and prisoners.

Prison Regime

Articles 25 and 26 of the 1971 Prison Law regulate "*labour of prisoners*". Article 25 stipulates that "*all convicted criminal prisoners shall, unless declared medically unfit, be required to work within or without the precincts of any prison*". The article continues by specifying the regime applicable to certain categories, including women and juveniles. Article 26 states that "*convicted criminal prisoners...shall be paid remuneration for work done*".

Currently prisoners at Mogadishu Central Prison do not undertake any specific work, apart from those who prepare the food for the prison population and are responsible for cleaning dormitories, toilets and common spaces. Prison industries and farms are non-existent and a proper management of prisons industries should be developed as a matter of priority, sufficiently financed and assisted by the Transitional Federal Government and the international community through the provision of material and equipment, training and mentoring programmes. In addition to the piping system to bring clean potable water to the prisons for the prisoners (and prisons staff) needs, there should be also a system to make available regular (unsalted) water for the creating and sustaining prisons farms. However, during the assessment experts were doubtful on the success of the establishment of prisons farm within the current prison's location as the soil is mainly composed by sand.

Counselling, Rehabilitation Programs and Preparation for Release

Article 32 of the 1971 Prison Law regulates the right of education of prisoners and states that a *"Commanding Officer shall take necessary steps to arrange educational classes for prisoners and shall permit them in their leisure time to study and to practice handcrafts"*.

Education and vocational training programs are undoubtedly one of the most pressing needs that the Somali authorities and the international community should provide to inmates to facilitate their reintegration within society upon release.

Currently no education programmes are provided to inmates at the Prison and there are no teachers made available to the Custodial Corps from the Ministry of Education. During the Siad Barre's regime there used to be a regular education programme provided to prisoners which mirrored

a similar programme available at schools in the outside world. The only form of teaching reportedly accessible to prisoners is religious education. According to prison authorities, this programme is provided by a Sheik, appointed by the Ministry of Justice, Religious Affairs and Endowment, who visit the prison three times a week and provides general teachings to inmates in their dormitories. Female inmates do not have access to such service or any other alternative program.

The prison does not have library and there is also no dedicated room which could be eventually used for classes.

No other rehabilitation/educational programmes are currently implemented in the Mogadishu Central Prison, especially for children/juveniles.

One of the recommendations made during the assessment is that prisoners with the requisite skills should be encouraged to teach other fellow inmates. However, no information on the existence of such skills is available as the admission of prisoners is not properly undertaken.

Safety and Security

At the time of the assessment, internal safety and security were not identified by the Prison Authorities as one of the major issues of concern in Mogadishu Central Prison. Authorities had indicated that in the past three years there have not been significant problems related to planned and/or undertaken strikes, riots, violence among prisoners or against prison personnel. In 2011 a prisoner was shot dead by a guard while attempting to escape. The Commander of the Prison clarified that only those guards who are deployed on top of watch towers are provided with arms and there are approximately 20 guards assigned to this task. Internal security is

also regulated and facilitated by inmates who gather in groups serving the functions of “prisoners committees”. Some of the prisoners’ representatives and members of these groups are directly appointed by the prisons staff based on their influence and respectability within the inmates community.

On Friday 20 April 2012, however, an attempted prison break led to the use of firearms and resulted in several casualties, including amongst prison officers. Official reports indicate that no prisoners managed to escape, but several other sources suggest a different outcome. The difficulties faced by the Custodial Corps in handling the situation were a clear symptom of the urgent need for capacitation and training of the custodial corps.

Deaths in Custody

The team did not have access to data on the number (and causes) of death in custody. The Commander of the Prison reported that in 2011 three inmates died of cholera, one prisoner died of HIV/AIDS, one prisoner was killed by the two fellow inmates, who were both detained for murder and on death sentence. In addition, during last three years twelve male inmates who were sentenced to death for being members of Al Shabab were executed in an area located within the Prisons’ perimeter, between the harbour and the airport in Mogadishu. President Sheik Sharif Sheik Ahmed authorized each execution upon request of the Attorney General, in accordance with the national legal procedure. Death sentences were carried out by prison staff. The members of the assessment team could not gather more information and/or details on these executions.

Internal Systems of Organization and Discipline

The Commander reported that within Mogadishu Central Prison there are no associations or committees of prisoners organized in a structured manner and with specific functions. However, he clarified reported that de facto groups of prisoners do exist and that contribute to protect and represent the interest of the inmates' community, liaise with the prisons staff and contribute to the maintenance of order and discipline within the Prison, including resolution of disputes among prisoners. Those who are considered as the most influential individuals within the Prison are usually selected to informally lead such groups. Members of these groups cannot enforce any disciplinary measure against an inmate who may have committed an offence and do not exercise any specific form of authority over or fellow inmates.

Disciplinary measures against prisoners can only be sanctioned by prison officials and reviewed by the Prison Commander. Part V³³ of the 1971 Prison Law regulates disciplinary and penal provisions, including offences and applicable punishments/measures.

Articles 47 and 48 provide a comprehensive list of minor and aggravated offences respectively, which may lead to the establishment of an inquiry into the alleged offence³⁴ and applicability of the appropriate punishment³⁵. Disobedience of orders or instructions provided by a prison official, violence among inmates, fights and or general physical interaction are among the most common offences being committed within Mogadishu Central Prison. The Prison Commander reported that no corporal punishment is imposed on any prisoner found guilty of having committed a minor or aggravated

33 Articles 46-58, Part V, of the 1971 Prison Law.

34 Ibid. Article 49.

35 Ibid. Articles 50-55.

offence. The typical disciplinary measures ordered in the Prison are the following:

- a) Rationing food;
- b) Losing "good conduct" points;
- c) Staying in an isolation room.

The Prison Commander reported that any disciplinary measure ordered against an inmate is duly recorded in the back page of the warrant or order of imprisonment as any other personal information of the detainee or prisoner. Usually there is no formal disciplinary process: an offence is report to or witnessed by a prison staff who informs the Prison Commander who in return decides the applicable measure. Finally, it does not appear that there is an established formal complaints procedures accessible to prisoners who may wish to request a revision of the merits of the disciplinary sanction.

As reported by staff of the Custodial Corps, no inmate has ever spent more than fifteen days in an isolation room. Whoever is ordered a period of isolation has the right to the leave the room twice a day for no more than two hours in the morning and afternoon. Prisoners kept in isolation leave their rooms more often than other prisoners (who can only leave their room for only one hour, three times a day) as these rooms at Mogadishu Central Prison are extremely small and the amount of air circulating in such room is very limited.

Special Categories of Offenders

Women

Female inmates, both remand and convicted are accommodated in a single room in a separate wing of the prison, secured by female prison officers. Inmates' age ranges from 15 to 60, with three inmates stated to be below 18 years of age. The room is vast and allows air circulation and light from the sun. While the female section is not overcrowded as the rest of the facility, due to the low number of inmates on average held (12 at the time of the visit) conditions are not otherwise better than the ones enjoyed by the rest of the prison population.

The room is unfurnished, with no bedding or other furniture provided and no means to store any personal possessions. Washing facilities and sanitation are inside the room in a corner separated by a wall partition, without door. There is no running water and water storing for washing or flushing is through the use of jerry cans. Conditions of walls and pavement are poor, with no signs of any maintenance.

It should be noted however that Prison Authorities have recently completed the construction of a new block in the female wing that they intend to use as a workshop for female inmates. While this is a welcome initiative, given the poor conditions of the current facility, it is recommended that the new facility be used to accommodate the inmates and the workshop be accommodated in the old premises. Some of the inmates show clear symptoms of medical conditions, including skin diseases and pronounced underweight. No hygiene products are provided by the prison authorities, according to inmates.

In March 2012, a human rights team was granted access to female prisoners and was able to conduct confidential interviews with the 12 inmates at the time detained. None of the inmates was able to specify the charges that resulted in their detention, with some inmates claiming to be unaware including of the grounds of their detention. None had access to a lawyer, privately paid or through a legal aid scheme, and all were by large unaware of their rights including right to appeal. Other findings include:

- Female inmates are detained for actions not established as crimes in the law. Two inmates, in particular, had been sentenced by the Hamarweine District Court respectively to four months and three years for “disobedience”. Article 430 of the Penal Code “ill treatment within the family” was used as the legal basis of the sentence. It should be noted, however, that article 430 deals with conducts related to the avoidance of “obligations relating to the exercise of parental authority, legal guardianship, or marriage” and not with the conduct in issue, which is not relevant criminally under the laws of Somalia. It should also be noted that one of these inmates was sentenced to three year imprisonment when in fact the sentence foreseen by article 430 C.P. is up to one year.
- Broad jurisdiction of the military court. Six inmates were sentenced by the military court on charges related to belonging to *Al Shabaab* or conducting operations for the insurgents. Sentences imposed by the Military Court range from one year to 25 years. According to interviews, trials at the military court only lasted one hearing.
- The concept of individual criminal responsibility needs to be reaffirmed. Several women claimed they were in detention not for acts by them committed but by their husbands and other members

of the family. For example, some of the inmates sentenced by the Military Court claimed that they had no personal affiliation to *Al Shabaab* and had in fact been sentenced because they were married to *Al Shabaab* fighters. In another case, a woman claimed she was detained in lieu of her brother who had escaped after killing a man.

- Two women were detained on grounds of assaulting their husband. Both recounted experiences of physical and mental violence by their spouse, which, they claim, promoted to commit their criminal actions.

Children

Currently the legal framework governing children in conflict with the law is out-dated and is not in line with the Convention on the Rights of the Child and/or any other applicable international instruments.

The 1970 Juvenile Justice Act is the only special provision within the Somali legislative framework that regulates the treatment, administration and detention of children within the criminal justice system.

As mentioned earlier, Somalia is not a party to Convention on the Rights of the Child (CRC) or its Optional Protocols. Under article 59 of the Penal Code, children under the age of 14 years shall not be criminally responsible. The age of criminal responsibility therefore starts at 14. In addition, there are no special provisions governing the treatment for children in prison or special regimes for children in detention. However, Article 60 of same Code provides that children between the age of 14 years and under the age of 18 years – maybe sent to prison if they have been arrested and/or sentenced for having committed a serious offence. However during the assessment the

Somali authorities did not provide any clarification as to what constitutes a serious offence. Consequently, there is a gap in the applicable legislation regarding the age at which a child could be committed to prison or detention. Finally, children convicted of minor offenses can be released on parole provided certain guarantees are provided by interested third parties.

As far as the determination of age of an individual is concerned, there is also no formal and/or acceptable mechanism which is consistently used by members of the criminal justice sector, in particular judges. In addition, there is no birth registration system in Somalia and consequently the determination of age is often made by non-qualified professionals and is further arbitrary and discretionary with no standardised reference to clear criteria based on international guidance in this area. As a result, these decisions often expose children to numerous protection risks and miscarriages of justice. The determination of the age of an individual is often conducted by the Prosecutor and in the event of a dispute; the judge responsible for the case would take the final decision. However, neither the Prosecutor nor the Judge rely on forensic expertise and/or any other rule or guidance which would assist them in determining the age of an individual in line with, as stated internationally acceptable guidance in this area. However, during the assessment, the authorities interviewed reported that a medical doctor does often support the court in determining age but they were unable to further elaborate on what criteria or guidance they relied on to determine age. As a result, the risk of arbitrary and discretionary decisions constitutes a serious matter of concern and presents a significant protection risk for children.

Additionally, there are no separate specialized young offender`s institutions for children and all children committed to prison are sent to the adults`

prisons. Despite the fact that the Law prescribes a strict separation between adults and juveniles in detention, children and adult male and/or female in prison are kept together. Of particular concern is the lack of separate facilities for girls. This situation poses a serious threat for both the physical and psychological wellbeing of children in detention. During the assessment, the Somali authorities reported that in the past there have been cases where children have been attacked and even killed by adults whilst in prison. There was also evidence of children being shackled and physically restrained whilst in prison despite the fact that this practice is strictly prohibited by the applicable law.

Children in detention and/or prisons also do not have access to psychologists or social workers or any other programme to address the needs of children, including special programmes that would cater for their educational or vocational needs or any other programmes to prepare them for their release.

Finally, there is no probation service or system applicable to children under the present legal framework and there are no open rehabilitation centres in any part of the country.

Overall, it is clear the conditions for children in prison are inhumane and in breach of the conventions and at times the laws which the government has passed/ratified and is not in conformity with the minimum international standards regarding the detention of children and the treatment of children in detention.

Management Systems

Budget, procurement, human resources management

The members of the assessment team received limited information on the organizational structure and budget of the Custodial Corps. As of March 2012, the Custodial Corps are composed by three hundred and fifty officer, three hundred males and fifty females. Despite the Custodial Corps are a civilian body being part of the Ministry of Justice, Religious Affairs and Endowment , they are structured in military ranks and regulated by military orders.

Custodial Corps do not have a regular budget which is annually allocated for their running costs. As a result, there are no specific records on their expenditures. The Ministry of Justice, Religious Affairs and Endowment submits the proposed budget to the Ministry of Finance upon request of the Custodial Corps. The budget is prepared based on the existing number of prisoners jailed in Mogadishu Central Prison at the time the budget is prepared. Usually, Custodial Corps allocate one dollar per day per prisoner while the salary of a prison official corresponds to the equivalent of one hundred dollars (100 USD) per month. At the end of each fiscal year there is no financial reporting on the allocation and disbursement of received funds.

Statistics

Maintaining accurate data both in the number and status of the country's prisons and comprehensive records on all prisoners is an essential prerequisite to the process of prison reform. The capacity of the Custodial Corps to generate data and statistics on the prison population and on

prison operations is quite limited or inexistent. The Custodial Corps should be able to develop periodic reports and statistics regarding the general conditions of prisoners. For the time being, there is no capacity to do so in a systematic and professional manner.

Recommendations

The Transitional Federal Government of Somalia has yet to develop a comprehensive strategy for criminal justice reform in general, including the prison sector. As emerged from the assessment, there is an urgent need to develop such long term plan without any further delay. In order to increase the professional capacity of prisons' personnel (both senior and regular prisons staff) the core of the reform programme should focus on the development of human resources, accountability mechanisms (including the establishment of complaints mechanisms offices and preparation of financial reports), and resource management systems. With respect to the rehabilitation of prisoners, there is an urgent need to develop and implement programmes aimed at improving the quality of academic and professional training for inmates, improving inmates' accommodation, health, nutrition, communication and recreational services, and to establish a system to facilitate their reintegration within society. There is also an urgent need to establish a separate rehabilitation programme for juveniles in detention as well as separate facilities for those under the age of 18.

Strengthen the Professional Capacity and Accountability of Prisons Personnel

The current legislative framework contains limited provisions for the professional development of prisons' personnel. In addition, the existing resources are seriously inadequate for any programme aimed at enhancing

the professionalism of the staff of the Custodial Corps. However, investing in the establishment of a professional and qualified cadre of junior and senior prisons' officers, supported by a balanced recruitment of female and male personnel, constitutes a necessary prerequisite for the reform of the prisons sector in Somalia. A specialized cadre for juveniles should also be established with specific training on handling of young offenders.

One of the first priorities would be the training of senior officials through various courses, including leadership programmes, as well as exposure to the experience of other senior prison officials in other African jurisdictions. A comprehensive review of existing training curricula should probably be undertaken. Alternatively, a new comprehensive national basic training programme for new recruits should be developed as well as new programmes for in-service training and professional development for existing staff.

Develop an Information Management Systems

There is an urgent need to establish a solid and sustainable monitoring, evaluation and support systems. In addition, Custodial corps should be provided with electronic and biometric database systems and trained on their use.

Development of Rehabilitation and Vocational Training Programs

The international community should provide necessary support to the Custodial Corps to develop within the prisons system an effective rehabilitation programme/s for prisoners and detainees. In particular, emphasis should be placed providing basic and more advanced education programmes specifically tailored around the needs of each inmate. In

addition, vocational training programmes should be established and/or expanded along with the provision of training equipment. In this respect, it's recommended to develop viable and sustainable prison industry (and farming) programs along with a comprehensive strategy (clearly outlining the necessary technical and financial requirements) and market studies. The Ministry of Justice, Religious Affairs and Endowment, the Ministry of Labour and the Ministry of Education should consider signing a Memorandum of Agreement to facilitate the provision of educational and vocational courses and programmes in prisons.

Rehabilitate/reconstruct Mogadishu Central Prison

As emerged during the assessment, one of the main priorities is the rehabilitation of Mogadishu Central Prison to provide for the secure, humane and safe detention conditions of prisoners and detainees, including provision of furniture and equipment. In particular, there is an urgent need to provide for facilities for a proper separation of prisoners in accordance with the provisions of the applicable Laws and Regulations.

Healthcare and Disease Prevention

Prisoners' right to health is an on-going issue. Prisoners are entitled to receive a standard of health care that is reasonably equivalent to that available to the general public. The development of healthcare facilities and of the disease prevention capacity of the prison system is a necessary requirement. In particular, access to clean water and basic sanitation should be considered as the most urgent priority. The Ministry of Justice, Religious Affairs and Endowment and the Ministry of Public Health should consider signing a Memorandum of Agreement to enhance the provision of healthcare in prisons.

Improving the Situation of Women and Children in Prison

The situation of women and children in prison is challenging and requires serious attention by the concerned national institutions and international community. As women and children are most exposed to becoming incarcerated for acts not of a criminal nature but for breach of traditional norms of conducts, it is urgent that some immediate awareness raising and capacity building is undertaken to counter such discriminatory trends.

a) Children:

There is an urgent need to build a separate facility for those children whom as a resort are committed/remanded/detained, whilst emphasizing that detention of children should always be a measure of last resort and for the shortest period of time and that diversionary and other solutions should always be explored first. In addition, there is also an urgent need to develop education and vocational programmes specifically designed to accommodate the juveniles in detention. This means that, as stated, diversion schemes must be developed to avoid detention for acts that are not of significant criminal weight. Whilst the current prison population regarding children is not significantly high, there is still no reliable data on the number of children which are held in custody whether in prison or other detention facilities. Hence, there is a pressing need to build the capacity of the government authorities and other stakeholders to collect reliable information and maintain the data updated. Adequate provisions and services should be identified and put in place to allow children access to education and suitable recreational activities. In addition to the above, there are other immediate measures which could be taken to address some of the most serious concerns and pressing requirements: conduct a basic awareness and training programme for members of the justice sector

on the existing national and international norms and standards provisions related to children in contact with the law; strengthen the capacity of the civil society to provide psychosocial support and counselling to children in detention and adequate legal assistance for such children.

For all these reasons one of the urgent needs is the establishment of a probation system for the handling of children`s cases as well as the need to explore the development of preventions mechanism: a diversion system and a system of restorative justice which can facilitate the speedy resolution of children`s cases and avoid unnecessary recourse to the criminal justice system to resolve what is often minor infractions.

Finally, the clear gaps in the current legislation concerning children, calls for an urgent comprehensive review of the legislation and rules in place governing children who come into contact with the law and at the same time an in-depth assessment of the administration of justice system in place with a view to modernizing and establishing a child focused and friendly criminal justice system in line with the minimum international standards, guidance and norms governing this area and group.

b) Women:

The wing within Mogadishu Central Prison in which women are currently accommodated needs to be refurbished as a matter of priority. Also for women there is an urgent need to develop education and vocational programmes specifically designed in accordance with their needs. Custodial Corps should take necessary steps to consider and provide for the conditions of infants and small children who may accompany their mother in prison, where it is the case in accordance with existing laws and standards, notwithstanding that the necessary procedures and services

need to be put in place to ensure that the court and its users have access qualified professionals such as probation/social workers who can facilitate the preparations of reports to assist the court in reaching decisions about children/infants in prison.

Facilitate Reintegration of Prisoners within Society

The establishment and implementation of a system to facilitate the integration of inmates released after their term of imprisonment shall become a government priority. This should include a program to support the implementation of the conditional release provision. What about parole? It is contemplated in the legislation but do we know if it works?

Support the Development and Implementation of Alternatives to Imprisonment

Technical assistance should be provided, as a matter of priority, to the development of a national sentencing policy (and related guidelines). In addition, capacity to supervise offenders in the community needs to be developed, perhaps at first on a limited demonstration basis. This would allow the proper supervision of offenders sentenced by the courts to provide community services. That capacity would also allow the justice system to put into effect other important dispositions of the country's *Criminal Code* concerning conditional releases, suspended sentences and probation. Finally, a community supervision capacity could also help alleviate some of the misgivings which currently exist within the population about the pardon system.

Establish a Monitoring and Inspection System of Detention Facilities

The Ministry of Justice, Religious Affairs and Endowment, the Ministry of the Interior and the Attorney General's Office should create an inter-ministerial oversight board to monitor detention and their compliance with the law. This board should be chiefly responsible for: reviewing compliance of the pre-trial detention with the time limits established by the Code of Criminal Procedure; ensure access to parole and release of prisoners upon expiration of sentences. It is believed that such establishment of such framework would reduce prevalence of unlawful detention.

In the absence of a National Human Rights Commission, it is urgently required to strengthen the role of the Attorney General's Office³⁶ to monitor the conditions of individual in detention. In the medium term, it is necessary to promote the establishment of an effective and independent national system to monitor and inspect all places of deprivation of liberty. In this respect, it's also required that support is provided to assist the Ministry of Justice, Religious Affairs and Endowment and Custodial Corps to follow-up on the outcomes of such inspections and implement recommendations as required.

³⁶ Article 14, Part III, of the 1971 Prison Law.



Qiimeynta Hanaanka Xabsiyada ee Muqdisho/ Bartamaha Koonfurta Soomaaliya

Sebteembar 2012

UNPOS

United Nations Political Office for Somalia



unicef



UNODC

United Nations Office on Drugs and Crime



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Hordhac

Inkasta oo ay weli taagan yihiin iska-hor imaadyo iyo dhaqaale xumo jiidamaysa, iyo weliba maleeshiyada Al Shabab oo weli sii joogta Magaalo Madaxda Soomaaliya, waxa xaqiiqo ah in amaanka Muqdisho kasoo roonaaday bilahii lasoo dhaafay, taasi oo u baahan in lagu taageero talaabooyin wax ku-ool ah oo dhidibada loogu sii aaso. In kasta oo kaalmooyinka/faro-galinta Beesha Caalamku ay taageero bar-tilmaansan u fidiyaan hay'adaha cadaalada qaarkood, balse ilaa hada waxa wadanka ka maqan maamul haboon oo suga cadaalada. Waxa kale oo iska xadidan ama aan jirin awoodii guud ee qaybaha ama xubnaha cadaaladu ku kaabi lahaayeen in dadweynahu helaan hanaan cadaaladeed oo sugan. In kasta oo baahida ugu darani ay hada tahay sidii dib loogu casriyayn lahaa habka maxkamadaha, adeegyada xeer-ilaalinta, iyo booliiska ee magaaalda Muqdisho iyo wleiba bartamaha Koonfurta Soomaaliya, balse waxa kale oo lama huraan ah in aan laga daahin in si quman loo tixgaliyo baahida loo qabo horumarinta adeegyada maxaabiista iyo dadka xoriyadooda laga xayiray. Hadaba sida lagu sii qeexi doono warbixintan, qabyada hanaanka cadaaladu waxa uu horseed ka yahay in maxaabiista badan oo kala duwan si qaldan oo sharci daro ah looga xayiro xoriyadooda. Waxa kale oo aan jirin nidaam kale oo xukun-ciqaabeed marka laga reebo in qofka la xiro, taasi oo lama-huraan ka dhigta in qofka loo xiro falal aad u fudud oo ay suutogal tahay in ciqaabtooda loo gudo kari lahaa qaab kale. Isla sidoo kale marka qofka la xiro, xaalada maxiibiistu ku sugan tahay waa mid aa uga hoosaysa heerarka ay waajibiyaan sharuucda xaquuqda aadamaha iyo weliba sharciga Soomaaliya.

Sanadkii 2011 waxa Xabsiga Dhexe ee Muqdisho ka dilaacay cudurka daacuunka, kadiibna iyada oo laga jawaabay codsiga xubno ka tirsan Qaramada Midoobay ee Soomaaliya (United Nations Country Team (UNCT) Somalia, ayaa ay Waaxda Qaramada Midoobay u qaabilsan Maandooriyayaasha iyo Dambiyada (The United Nations Office on Drugs and Crime) – Xafiiska Gobolada Afrikada Bari (UNODC ROEA), ayaa sahlay in uu abuurto oo isku dubo-rido koox khabiiro ah oo qiimeyn ku sameeya Waaxda xabsiyada ee Bartamaha Koonfurta Soomaaliya/Muqdisho. Kadib markaasi ayaa Waaxda UNODC ROEA waxa ay abuurtay mashruuc lagu taageerayo dibu-dhiska waaxda asluubta iyo weliba dibu-qalabaynta Xabsiga Dhexe ee Muqdisho.

Waxana kooxdan khabiirada ah ee Qaramada Midoobay ee UNODC, iyo weliba Xafiiska Komishanka Sare ee Xaquuqda Aadamiga (Office of the High Commissioner for Human Rights (OHCHR)/UNPOS Human Rights Unit) iyo United Nations Children’s Fund (UNICEF) waxa ay bilaabeen qiimeyntan oo ay qeyb ka tahay booqashooyin taxane ahaa oo lagu aaday Xabsiga Dhexe ee Muqdisho, isla markaana kulamo lala qaatay saraakiisha Dawlada ee masuulka ka ah hay’adaha iyo waaxaha kala duwan ee maamulka dambiyada, waxana saraakiishaa ka mid ahaa wakiilo ka socday Wasaarada Cadaalada, Diinta iyo Awqaata, Madaxda Xabsiyada iyo Cadaalada. Xubnaha kooxdan qiimeynta samaysay waxa kale oo ay la-tashiyo la sameeyeen wakiilo matalaya kooxaha bulshada, iyo weliba waraysiyo ay la yeeshen maxaabiis ku xirnayd Xabsiga Dhexe ee Muqdisho.

Guud ahaan ujeedada qiimeyntanu waxay ahayd (fiiri Annex-ka I) in dib loo fiiriyo haykalka sharciyeed ee khuseeya xabsiyada, xaalada maxaabiista, ciqaabaha dambiyada ee aan xabsiga ahayd, iyo weliba xaalada

xabsiyada ee maxaabiista la xukumay iyo ku aan weli la xukumin. Xaga amaanka awgeed iyo in aad la booqan karin meelaha ka baxsan xukunka Dawlada Federaalka ee Ku-meelgaarka ah, waxa u suurto gashay xubnaha kooxda Qoramada Midoobay in ay booqdaan oo kaliya Xabsiga Dhexe ee Muqdisho.

Wasaarada Cadaalada, Diinta iyo Awqaafta, iyo Ciidamada Asluubtu (Custodial Corps) ma aanay isla meel-dhigin istaraatajiiyad dhamaystiran oo ku aadan dibu-qaabaynta xabsiyada. Sidaa awgeed waxa si degdeg ah loogu baahan yahay qorshe lagu kobcinayo hawl-galka habka xabsiyada; qorshahaasi oo qayb ah qorshaha guud ee dib loogu qaabaynayo dhamaan haykalka cadaalada. Hadaba sida kusii qeexan qeybta falanqeynta iyo weliba soo-jeedimaha ee warbixintan, waxa ay hay'adaha iyo ururada UNCT ku baaqayaan in la dhaqan-galiyo talaabooyin taxane ah oo hadafkoodu yahay sidii hada iyo wakhtiga dheerba loogu guulaysan lahaa horumarinta dhinacdayada muhiimka ah ee xamsiyada; tusaale ahaan haykalka nidaamka iyo sharciyada, abuurida Heer-beegyada Hawl-fulinta iyo adeegyada ee xabsiyada; Hanaanka Maamulka Macluumaadka (information management systems), tusaale ahaan, abuurida database-yo atumaatik ah oo lagu xafido macluumaadka maxaabiista; dayactirka sahalada iyo xaaladaha xabsiga muqdisho, oo muhiimada ugu horaysaa tahay sidii loo yarayn lahaa tirada maxaabiista xad-dhaafka ah, iyo weliba in loogu dadaalo sidii ay u heli lahaayeen biyo iyo nadaafad wacan; maxaabiistu in ay helaan daaweyn haboon, shaqaale tobobaran oo hufan, iyo weliba in loo abuurro borogaraamy ku aadan daryeelka caafimaadka iyo dhaqan-celinta maxaabiista.

Guud ahaan haykalka Qawaaniinta Khuseeya

Soomaaliya waxa ay xubin ka tahay oo ku waajibay sharciyada caalamiga ah ee xuquuqda aadamaha ee tooska u khuseeya xaquuqda maxaabiista. Kuwaasi waxa ka mid ah, Sharciga Caalamiga ah ee Xuquuqda Madaniga iyo Siyaadada; Sharciga Caalamiga ah Xaquuqda Dhaqaalaha, Bulshada, iyo Dhaqanka; Xeerka Lidka ku ah Jir-dilka iyo Dhaqamada kale ee Cadawnimo iyo Ciqaabaha Sharaf-xumada/Axandarada ah (the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). Nasiib-daro Soomaaliya ilaa hada ma aanay adeecin Xeerka Xaquuqda Caruurta iyo weliba Borotakoolada lkhtiyaariga ah ee la socda xeerkaa. Waxa kale oo jira xeerar kale oo iyaguna si gaar u ah u khuseeya maxaabiista iyo xaaladaha dadka xoriyadooda laga xayiray. Waxana kuwaasi ka mid ah: Xeerka Nidaaminta Xaaladaha Maxaabiista ee loo yaqaano 'the Standard Minimum Rules for the Treatment of Prisoners (1957); Qawaaniinta Ilaalinta dhamaan dadka maxaamiista ah ama xayiran oo ah xeerka loo yaqaano 'the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); Qawaaniinta Aasaasiga ah ee Daryeelka Maxaabiista oo loo yaqaano 'the Basic Principles for the Treatment of Prisoners (1990), Qawaaniinta Khuseeya Maamulka Cadaalada Caruurta oo loo yaqaano 'the Standard Minimum Rules for the Administration of Juvenile Justice (1985)', Qawaaniinta Qaramada Midoobay ee Caruurta xoriyadooda la xayiray oo loo yaqaano 'the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990), Tusmooyinka UNt-ta ee tilmaamaya sida looga baajinayo caruurta dambi-falyaasha ah (UN Guidelines for the Prevention of Juvenile Delinquency (1990), iyo weliba Heer-beegyada UN-ta ee loo yaqaano 'UN Standard Minimum Rules for Non-custodial Measures (1990).

Wadanka Soomaaliya waxa ay xeerarkan xuquuqda aadamigu uga dhaqan-galeen si iska xadidan. Isla markaana lama adeeco xeerarka wadanka ee waafaqsan sharciyada caalamiga ah.

Heer wadan ahaan, sababo la xiriira xaga wakhtiga, qiimeyntani waxa ay ku kooban tahay Axdiga Ku-meelgaarka ah ee Dawlada Federaalka ee 2004 iyo Dastuurkii Soomaaliya ee 1963 (soona xiganaya “Dastuurkii 1961”), iyo xeerarka kale ee khuseeya iyo xeer nidaamiyahooda. Sidaa awgeed ujeedada qiimeyntani ama warbixintan laguma falan-qeyn doono xeerar ama xeer-kaabayaal kale oo khuseeya arrimahan.

Isla wakhtigan qiimeyntan oo lagu jiro gebo-gebadeedii iyo qoraalka warbixinta, waxa iyana lagu gudo-jiraa soo-jeedimo kala duwan oo ay soo jeedisay Qaramada Midoobay¹ oo ku saabsan dibu-dhiska iyo casriyeynta haykalka sharciyeed ee hada lagu maamulo xabsiyada Soomaaliya. Hase yeeshee qiimentani waxa ay khusaysaa haykalka sharciyeed ee hada jira, sidaa aawadeed looma arag in qiimentan lagu falan-qeeyo wixii sharciyo ah ee aan weli qabyada ah/ama aan la hirgalin.

Qodobka 16, Cutubka 5 ee Ilaalinta Xaquuqaha iyo Xoriyaadka Aasaasiga ah (Protection of Fundamental Rights and Freedoms of the People), ee Axdiga Dawlada Federalka ee Ku-meelgaarka ah 2004 waxa uu dhigayaa “in aan qofna aan loo xayiri/xiri karin ama xoriyadiisa shaqsiyeed la xayirin, qaab kasta oo ay noqoto, marka laga reebo xiritaanka qofka oo fal-dambiyeed faraha kula jira ama aanay ansaxin awood garsoor oo karaankeeda leh”². Kadibna waxa lagu sii xaqiijiyay sida sharciga ku qeexan, “qof kasta oo loo xiro shaki ama eedeyn ama laga xayiray xoriyaadka shaqsiyeed, waxa waajib ah in eedayshanahu 48 saacadood gudahood ku helo garsoor awood u leh, loona xaqiijiyo isla wakhtiga ku qeexan sharciga”³.

Qodobka 17 ee Axdiga Ku-meelgaarka ah ee Dawlada Federaalka ee 2004, ee khuseeya xaquuqda muwaadiniinta sharciga lala tiigsanayo, waxa uu dhigayaa “qof kasta oo la xiro ma la xiyiro waa in loo ogolaado xaquuqda in qofkaasi iska difaaco maxkamada dhexdeeda qof ahaan, ama isga oo kaashanaya qaraabo ma qareen sida kolba isagu rabo”.

Title-ka I ee Dastuurkii 1961 waxa ku qoran dhowr qodob oo ka hadlaya “xaquuqaha iyo waajibaadka qofka”, waxana ka mid ah qodoba si toos ah ama aan toos ahayn u khuseeya guud ahaan arrimo la xiriira xayraadaha xaquuqda dhaqdhaqaaada ee qofka.

Qodobka 16-aad ⁴ ee Axdiga Ku-meelgaarka ah ee Dawlada Federaalka ee 2004, iyo Qodobka 17-aad ee Dastuurka 1961 waxa ay dhigayaan “in aan qofna aan loo xayiri/xiri karin ama xoriyadiisa shaqsiyeed la xayirin, qaab kasta oo ay noqoto, marka laga reebo xiriitaanka qofka oo fal-dambiyeed faraha kula jira ama aanay ansaxin awood garsoor oo karaankeeda leh, oo lagu xusay sababra xiriitaanka iyo waafaqsanaanta sharciga.” Isla qodobkaasi isna waxa uu dhigataa “in qof kasta oo la xiro ama la xadido xaquuqdiisa xoriyada, waa in markiiba qofkaas laga wargaliyaa sababta loo xiray”. Macnaha erayga “dambi faraha kula jira” waxa qooxay Qodobka 37, Qeynta II, Buuga I ee Xeer-nidaamiyaha fal-dambiyeedka ee 1963 (1963 Criminal Procedure Code).

Qodobka 18-aad ee Dasduurka 1963 waxa ku dhigan “damaanad-qaadyo loogu talo-galay qofka la xayiro xoriyadiisa shaqsiyadeed”, kana madnuucaya in qofkaasi loo geysto dirir/xad-gudubyo jireed ama nafsiyadeed oo ku aadan qofka laga xayiray xoriyadaha shaqsiga ah”,

1 The 2004 Transitional Federal Charter, Chapter 5, Article 17, Paragraph 5.

2 The 2004 Transitional Federal Charter, Chapter 5, Article 17, Paragraph 6.

3 The 2004 Transitional Federal Charter, Chapter 5, Article 17, Paragraph 4.

waase xad-gudubyada sharci ahaan dambi ah marka la fiiriyo sharciga khuseeya.

Xeer-nidaamiyaha fal-dambiyeedka 1963⁵ iyo wax-kabadalkii dambe ee sanadkii 1972, waxa ku dhigan qodobo ka hadlaya eedaysanayaasha la xiyiro ama la xabsi lagu xukumdo iyo heerarka kala duwan ee dacwadooda dambiyeed.

Buuga I, Qeynta II, Cutubka I waxa uu khuseeyaa nidaaminta siyaabaha kala duwan ee loo "sugaya imaanshaha qofka eedeysnaha ee maxkamada"⁶ tusaale ahaan in qofka la soo xirayo waaran lagu soo xiro ama waaran la'aan, balse ay ka timaado cida awooda u leh, isla markaana la xubiyo, qawaaniinta, iyo nidaamka xariraada iyada oo la sugayo xaquuqa shaqsiyadeed ee aasaasiga iyo xoriyada qofka⁷ Qodobada 46⁸ and 47⁹ waxa ay dhigayaan nidaamka qofka lasoo xiro ee rumaanka ku jira iyo mudada uu qofkaasi xirnaan karo, waana in xayiraadu noqotaa mid waafaqsan amar sharciyeed oo kasoo baxay garsoore awood u leh iyo maxkamada awooda u leh.

Ugu dambayntii, buuga IV, Qeybta II waxa ku xusan nidaamka hirgalinta xukumada iyo talaabooyinka kale ee ay amarto cida awooda u leh, tusaale ahaan ganaaxyada¹⁰, xabsi¹¹ ama xukunada dilka ah¹².

Penal Code-ka 1964¹³ waxa ku qoran dhowr qodon oo khuseeya hirgalinta xukunada xabsiga ah. Ugu horayntii, Penal Code-ka 1964 waxa uu qeexayaa xukunada ku haboon dambiyada qofka lagu helo marka maxkamada la horkeeno, waxana ka mid ah xukunada dilka ah¹⁴, xabsi daa'inka¹⁵, xukunada xabsiga mudada gaaban ama dheer¹⁶ iyo xukunada ganaaxa

4. Ibid. Article 250 (Execution of Fines), Section I, Chapter II, Part II, Book IV.

ah¹⁷. Cutubka V¹⁸ ee Penal Code-ka 1964 waxa ku dhigan nidaamka dhaqan-galinta xukunada ciqaabta, isla markaana farqi macruuf ah u kala dhigaya awoodaga ku aadan dambi-falayaasha kala duwan. Qodobka 136, Firqada (5) waxa ku dhigan in maxaabiista dumarka ah lagu xiro meel ka soocan raga maxaabiista ah.

Xeerka Xabsiyada ee hada lagu nimaamiyo maxaabiista iyo dadka xayiran ee Soomaaliya waxa la qoray oo uu dhaqan-galay sanadkii 1972 (kaasi oo kadib lagu magacaabay Xeerka Xabsiyada ee Prison Law 1972¹⁹).

Xeerka Xabsiyada ee 1972 waxa ku jira qodoba nidaaminaya aasaaska iyo maamulka xabsiyada²⁰, xanaanada iyo daryeelka guud ee maxaabiista²¹, dhishibiliinka iyo nidaamka²², sii-deynta iyo kaalmooyinka maxaabiista²³, sharuudaha liisanka sii-daynta²⁴, booqashooyinka xabsiyada²⁵, dambiyada khuseeya xabsiyada iyo maxaabiista²⁶, iyo weliba dejinta xeerar kaabayaasha iyo nidaamyada maamulka xabsiyada²⁷, tusaale ahaan Amarada iyo Wareegtooyinka.

Madaxda xabsiyadu waxa ay masuul ahaan hoos yimaadaan Wasaarada Cadaalada, Diinta iyo Awqaafta ee Dawlada Federaalka ee Ku-meelgaarka ah ee Soomaaliya, waxana ay masuul ka tahay hubinta habsami u socodka maxaabiista faderaalka. Wasaarada Cadaalada, Diinta iyo Awqaaftu waxa kale oo ay ka masuul tahay jiheynta siyaasada

5 Ibid. Article 249 (Execution of Sentence of Imprisonment), Section I, Chapter II, Part II, Book IV Code.

6 The Penal Code was enacted by Legislative Decree No.5 of 16th December 1962 and came into force in 1964.

7 1963 Penal Code, Article 94 (Punishment of Death), Chapter II, Book I.

8 Ibid. Article 95 (Imprisonment for Life), Chapter II, Book I.

9 Ibid. Article 96 (Imprisonment for Crimes), Chapter II, Book I.

iyo waliba karaan kobcinta (capacity building) si markaasi loo horumariyo habsami u socodka hawl-qabadka xabsiyada iyo weliba in wasaaradu u fidiso kaalmada ay u baahan yihiin madaxda xabsiyada Soomaaliyeed. Nasiibdaro, masuuliyiinta Soomaaliyeed ma aanay u soo gudbin kooxda qiimeynta dokumantiyo sharciyeed oo khuseeya nidaamka guud iyo awoodaha Ciidanka Asluubta.

Sooyaalka dadka maxaabiista ah

Ilaa hada Xabsiga Dhexe ee Muqdisho ayaa ah xabsiga kaliya ee hoos yimaada masuuliyaha Wasaarada Cadaalada, Diinta iyo Awqaafta ee Dawlada Ku-meelgaarka ah ee Soomaaliyeed. Balse waagii hore Wasaarada Cadaalada, Diinta iyo Awqaaftu waxa kale oo ay masuul ka ahayd xarunta dhaqan-celiska (reformatory) oo ku taalay magaalada Afgooye. Xaruntaasi waxa lagu heyn jiray caruurta sharciga la horkeeno, waxana ay ahaan jirtay goob lagu dhaqan-celiyo caruurta, oo lagu taagero sidii caruurtaasi bulshada loogu celin lahaa. Hadase xaruntaasi dhaqan-celintu waxa ay ku taalaa magaaladaasi ay weli ka taliso **Al Shabab**, isla markaana ma jiraan warar sugan oo lagu ogaan karo sida hada xarunta loo isticmaalo. Waxa kale oo ku yaalay Kaysaney dhismo kale oo loo isticmaali jiray in si ku meel-gaar ah loogu hayo maxaabiista ka

10 Ibid. Article 97 (Fine for Crimes), Chapter II, Book I.

11 Ibid. Articles 136- 142, Chapter V, Book I.

12 Law No. 7 of 30 December 1971, published in the Official Bulletin, Supplement No. 2, Volume 1 of 15 January 1972

13 Ibid. Articles 2- 14, Parts II and III.

14 Ibid., Articles 15- 45, Chapters 1-10, Part IV.

15 Ibid., Articles 46-58, Part V.

16 Ibid., Articles 59-60, Part VI.

17 Ibid., Articles 61, Part VII.

18 Ibid., Articles 62, Part VIII.

19 Ibid., Articles 63-70, Part IX.

20 Ibid., Articles 71- 74, Part X.

21 Ibid., Articles 15- 45, Chapters 1-10, Part IV.

timaada xabsiyada kale. Qodobka 3-aad ee Xeerka Xabsiyada 1972 ayaa dhigaya nidaamka xaaladaha loo abuurin karo xabsiyada ku-meelgaarka ah iyo cida la galin karo, waxana qodobkaasi dhigayaa xaaladaha keeni kara buux-dhaafka xabsiyada iyo weliba cudurada faafa.

Ilaa dhamaadka bisha Luulyo 2012, dadka xabsiga ku jira waxa lagu qiyaasaa 950 qof oo ku xiran Xabsigan Dhexe ee Muqdisho, balse 1354 qof ayaa ku jiray xabsigaa sanadkii kasii horeeyay ee 2011. Wakiilada Wasaarada Cadaalada, Diinta iyo Awqaaftu waxa ay shegeen in qiyaas ahaan 25% dadka xabsiga ku xiran ay soo xukuntay maxkamad ciidan, kuwaasi oo ay waliba ka mid yihiin dumar maxaabiis ah. Xabsigan Dhexe ee Muqdisho hada kuma jiraan maxaabiis qalaad oo wadamo kale u dhashay.

Maxaabiista xabsiyada waxa loo kala qaybin karaa sidan hoos ku xusan:

- a 14 dumar ah (3 xukun-sugayaal/rumaan ku jira iyo 11 xukuman);
- b 39 Caruur ah (23 xukuman iyo 16 xukun-sugayaal ah);
- c 61 qof oo ku xukuman dil (dhamaan waa rag);
- d 717 maxbuus oo ku xukuman inta u dhaxaysa shan sano ilaa xabsi daa'im (11 dumar ah, 23 caruur ah iyo 706 rag ah);
- e 135 qof oo xukun sugayaal ah (116 rag ah, 3 dumar ah iyo 16 caruur ah);

22 Ibid., Articles 46-58, Part V.

23 Ibid., Articles 59-60, Part VI.

24 Ibid., Articles 61, Part VII.

25 Ibid., Articles 62, Part VIII.

26 Ibid., Articles 63-70, Part IX.

27 Ibid., Articles 71- 74, Part X.

Sanadkii 2011 dadka lagu xukumay dil waxa ay ahaayeen konton qof. Waakiilada Wasaarada Cadaalada, Diinta iyo Awqaaftu waxa kale oo ay sheegeen in dhamaan lixdan iyo kow (61) qof ee ku xukuman dilku ay wada yihiin *Al Shabab*. Sanadkii 2011 hal qof oo dumar ah oo lagu xukumay dil markii lagu helay in ay "hub" ka iibisay *Al Shabab*, *isla markaana qeyb ka ahayd kooxdan argagaxisada ah, waxa markii dambe cafis*²⁸ u fidiyay madaxweynaha Sheik Sharif Sheik Ahmed.

Marka laga reebo Qodobka 136-aad, Firqada (5-aad) ee Penal Code-ka 1972, waxa jira Qodobka 22-aad ee Xeerka Xabsiyada 1972 oo qeexaya in raga iyo dumarka maxaabiista ah meel kala soocan lagu kala hayo. Qodobka 23-aad ee Xeerka Xabsiyada 1972 waxa kale oo uu kala nidaaminayaa kala soocida noocyada kala duwan ee maxaabiista, tusaale ahaan kala soocida maxaabiista xukun-sugayaasha ah iyo kuwa lagu xukumay xukun kama-dambaysa, iyo welina caruurta iyo dadka mudakarka ah, dadka dambiga ugu horeeya galay iyo kuwa caadaystay dambiyada).

Qiimeyntan lagu sameeyay Xabsiga Dhexe ee Muqdisho waxa lagu xaqiiqsaday kala soocnaanta maxaabiista raga iyo dumarka ah. Laakiinse sidaas oo kale looma kala sooco maxaabiista dhalinta aan qaan-gaarin iyo dadka mudakarka ah, in kasta oo sharcigu dhigayo in la kala sooco²⁹. Badanaa dadka mudakarka ah ee xukun-sugayaasha ah waa laga soocaa maxaabiista la xukumay. Laakiinse dumarka maxaabiista ah iyo caruurta dumarka ah looma kala sooco kuwa xukun sugayaasha ah iyo kuwa xukun ku dhacay, oo ma kala laha meelo u kala gaar aa. Sidoo kale ma jiraan kala sooc macruuf ah oo u kala dhexeeya maxaabiista ay soo xukuntay maxkamada ciidanku iyo kuwan ay soo xukuntay maxkamada madaniga ah; waxa iyaguna aan sidan oo kale u kala soocnayn maxaabiista galay

dambiyada badbaada qaranka (amaanka qaranka) iyo maaxaabiista danbiyada caadiga ah lagu xukumay. Waxana iska macruuf ah in tani muujinayso walaac halis ah oo ku aadan xaga amaanka gudaha iyo weliba dhaqan-celinta maxaabiista.

Masuuliyiinta Soomaaliyeed waxa ay ku adkaysteen in dhamaan maxaabiista lagu soo xiray kadib amarka waaran sharci ah, sida waafaqsan Xeer-nidaamiyaha fal-dambiyeedka 1963 iyo weliba Xeerka Xabsiga 1971 (1971 Prison Law). Xabsi-galida maxaabiista waxa lagu sii falanqeyn doonaa xaga dambe ee warbixintan. Laakiinse waxa haboon in Qodobka 15-aad, Faqrada 1-aad, ee Xeerka Xabsiyada uu dhigayo in "aan qofna xabsiga la galin ilaa iyo marka la helo waaran (amaar maxkamadeed) ama amar kasoo baxay masuuliyada awooda u leh". Mudadii qiimeynta waxa uu Taliyaha Xabsiga Dhexe ee Muqdisho ku dooday in aanay xabsiga ku jirin maxaabiis lagu soo xukumay amaro ka baxsan hanaankan. Waxa kale oo uu sheegay in dokumantiyada maxkamada la hubiyo marka qof la keeno xabsiga si loogu xiro. Taliyaha xabsigu waxa kale oo uu cadeeyay in hada waaranada iyo amarada maxkamada lagu kaydiyo xafiiskiisa, dokumentiyadana si gaar ah ayaa la isugu laabaa, balse ma jiraan meel haboon oo sugan oo lagu kaydiyo dukumantiyadan.

28 Article 75, paragraph c) (Power and Duties) of the 1961 Constitution states that "The President of the Republic shall.....c) grant pardon and commute sentences". Article 149, Chapter II, Book I of the 1963 Penal Code states that "...pardon shall constitute condonation, wholly or in part, of the punishment imposed or shall commute it to another kind of punishment fixed by Law".

29 Article 5, paragraph 3, of the Juvenile Courts and Reformatories Law No. 13 of 8 March 1970

Maamulka xabsiga

Sahalada (Qaab-dhismeedka)

Xabsiga Dhexe ee Muqdisho waxaa dhisay gumaystahii Talyaaniga horaantii sanadadii 1930, waxanu ku yaalaa Degmada Hamarweyne. Xabsiga Dhexe ee Muqdisho waxa uu ku yalaa meel yara taagaan magaalada, waxana dhinaca koonfureed ka xigta bada (GPS data: N 020 01' 37.9" E 0450 20' 06.7"), waxana uu ahaa xabsiga kaliya ee wadanka Soomaaliya ilaa markii dambe meelo kale oo wadanka ah laga dhisay xabsiyo kale. Waxa xaga waqooyiga ka xiga xarumaha ay dagaan shaqaalaha xabsiga dhexe, waxana xaga bariga ka xiga cusbitaalka la yiraa 'De Martino Hospital'. Dhinaca galbeed waxa ka xiga dakeda Muqdisho iyo dhismayaal dawladeed, dhinaca koonfureedna dakeda iyo badweynta hindiya. Dhisme ahaan, Xabsigan Dhexe ee Muqdisho waxa hada laga hawl-galaa qeybta dhexe oo kaliya, oo ka kooban dhismayaasha soo socda:

- a Xafiisyada Taliyayaasha;
- b Xafiisyada maamulka;
- c Qaybaha kala-sooca (segregation Section);
- d Xarunta dhaqan-celinta (*Daryeel*);
- e Qeybta Raga;
- f Qeybta Dumarka;
- g Qaybta Maxaabiista Siyaasada (*Asab*);
- h Dhismaha Kusheenka.

Qeybaha kale ee muhiimka ah ee xabsigu hada ma shaqeeyaan, tusaale ahaan qeybta Maxaabiista Mudada Dheer iyo weliba qeybta caruurta aan qaan-gaarin. Qeybta maxaabiista mudada dheer waxa ay ka kooban tahay sadex dhisme oo waaweyn, kuwaasi oo laba ka mid ahi ay dhamaan

burbursan yihiin. Qeybta dhalaanka aan qaan-gaarin waxa markii hore laga dhisay meel baxsan xayndaabka, oo ku dhow irida laga soo galo, balse goobtaasi waa mid hada wada burbursan. Dhismaha Xabsiga Dhexe ee Muqdisho waxa aad usii liitaa darbigiisa ku xeeran iyo dhismayaasha ay galaan waardiyaashu iyo meelaha ay degan yihiin shaqaalahu.

Sidii aan hore usoo sheegay, Qeybta dhexe ee xabsigu waxa ay ka kooban tahay dhismayaasha maamulka, qolalka maxaabiista dilka ku xukuman, qeybaha maxaabiista iyo kusheenka. Dhamaan dhismayaashaasi waa kuwo adeegi kara balse waxa ay u baahan yihiin dayactir xoogan, tusaale ahaan in laga badalo saqafka, korka iyo in wajiga dhismaha la talbiiso, loo sameeyo irido iyo daaqado cusub, iyo weliba in loo saamaxo sahalada korantada iyo nadaafada. Kusheenku waxa uu u baahan yahay dayactir xoogan sida in lagu kordhiyo sahalo cusub oo wax lagu kariyo iyo weliba qalabka cuntada lagu diyaariyo.

Goobta loogu yeero dhaqan-celisku waxa ay ka kooban yahay sahalo kooban sida qolal, xafiis, qolka farmasiyaha, qolalka qubayska iyo musqulo dibada ku yaala. Sidoo kale dhismaha qeybtani waxa uu u baahan yahay dayactir xoogan, tusaale ahaan in laga badalo saqafka, dusha laga talbiiso, irido iyo daaqado cusub iyo weliba sahalada korantada oo laga badalo.

Xabsiga Dhexe ee Muqdisho ma lahan koronto u gaar ah, waxana ay korantadu uga timaadaa shirkad koronto oo gaar loo leeyahay taasi oo korentadeeda qaali tahay isla markaana aan la isku halayn karin, mana jiraan ilo koronto oo kale oo ay u isticmaali karaan marka korantadu tagto ama degdeg loogu baahdo. Markaasi waxa Xabsigu u baahan yahay in loo sameeyo mashiino koronto oo cusub, isla markaana dib loo badalo

hanaanka qaybinta korontada oo loo sameeyo goob u kala badasha kolba korantada diyaarka ah (electrical switchgear).

Dhismayaasha hada jira ee qaybaha dhexe, xarunta maxaabiista siyaasada iyo weliba qeybta dumarku waxa ay u baahan tahay dayactir sahlan ilaa mid heer dhex-dhexaad ah, Balse dhismayaasha loogu talo-galay maxaabiista mudada dheer iyo dhismayaasha kale ee xabsigu waxa ay u baahan yihiin dibu-dhis xoogan ama in la dumuyo marka hore (si loo sugo bad-qabkooda) meelaha loo baahan yahay. Marka laga yimaado xaga dhismaha iyo dayactirka, Xabsiga Dhexe ee Muqdisho waxa kale oo uu u baahan yahay aaladaha iyo qalabka lama huraanka u ah shaqaalaha xabsiyada iyo maxaabiista.

Xabsi-gelinta (gudoonka) iyo cabiraadaha

Waxa ay u muuqataa in Xabsiga Dhexe ee Muqdisho aanu lahayn hanaan haboon oo lagu cabiro, loona gudoomo maxaabiista cusub. Sida ku xusan faqradaha sare, lama ogola in qofna xabsi la galiyo ilaa lala keeno waaran/ amar maxkamadeed oo awood u leh xayiraada.

Hanaanka xabsi-galka iyo cabiraada qofka xabsiga la keeno waxa nidaamiya Cutubka 1-aad ee Xeerka Xabsiyada³⁰. Qodobka 10 waxa uu dhigayaa in masuulada xabsigu ay awood u leeyihiin in ay sawiro ka qaadaan maxbuusyada cusub ee xabsiga la keeno.

Xilliga Kooxdan qiimeyntu ay booqatay Xabsiga Dhexe ee Muqdisho waxa uu Taliyaha xabsigu kooxda tusay buuga hada loo isticmaalo diiwaangalinta maxaabiista. Waxana buugaa lagu qoraa oo kaliya macluumaadka aasaasiga ah, tusaale ahaan maallinta qofka xabsiga la keenay, magaca iyo lambarka waaranka, macluumaadkaasi oo inta badan aan ka badnayn

laba layn maxbuuskiiba. Waxayna u muuqataa in diiwaankii ku haboonaa diiwaangalinta maxaabiista in la iska dhaafay, waayo waxa lagu dooday in aan xabsigu hada awoodi karin qiimaha diiwaanada noocan ah.

Waxa kale oo kooxda qiimeynta u cadaatay in aan maxabiistu marka ay yimaadaan la siin macluumaad macruuf ah oo ku saabsan qaanuunka iyo hanaanka xabsiga, tusaale ahaan macluumaadka hawl-maalmeedka xabsiga, liiska falalka dhishibiliinka, ciqaabaha maxbuusku mudan karo iwm. Sidoo kale, waxa suurto ah in shaqaalaha heeganka ku jira marka maxaabiistu soo gaadho xabsiga in aanay tabobar khaas ah u lahayn sida maxbuusyada cusub loo soo dhaweeyo. Marka maxbuusku yimaado waxa kaliya ee la sameeyaa waa "kala-sooc" asaasiga ah, waxana markiiba loo gudbiyaa mid ka mid ah labada qaybood ee xabsigu ka kooban yahay. Mana jiraan macluumaad kale oo laga qoro maxbuuska waayo waxa ay shaqaalaha xabsigu ku doodeen in aanay jirin adeega lagu kaydiyo macluumaadka loo baahan yahay. Waraaqda waaraanka ama amarka maxkamada gadaasheeda ayaa lagu qoraa macluumaadka shaqsiyadeed ee maxbuuska, tusaale ahaan waxa lagu qoraa macluumaadka caafimaadka, xiliyada maxbuuska la yara fasaxo, marka xabsi kale loo gudbiyay, taariikhda la sii dayn karo maxbuuska, xad-gudubyada dhishibiliinka iwm. Marka laga reebo xafiiska taliyaha xabsiga ma jirto meel kale oo aamin ah oo lagu kayd in karo macluumaadkaasi. Sidaa awadeed waa arin wax u dhimi karta amaanka iyo waliba sugnaanta in la xafido macluumaadka maxaabiista. Waana iska macruuf in loo baahan yahay in ciidamada asluubta dhinacan laga teegeero.

30 Articles 15, 19, 20, and 21 of the Law No. 7 of 30 December 1971, published in the Official Bulletin, Supplement No. 2, Volume 1 of 15 January 1972.

Xaaladaha Noleled

Xaqqiigan waxaa jira baahiyo maadi ah oo looga baahan yahay dawladu in ay fuliso si ay markaasi u gudato waajibaadka ka saaran xafidaada xaquuqda aadamiga ee maxaabiista, isla markaana u kafayso waajibaadka daryeelka ee dawladhimo. Waajibaadkaasi waxa ka mid ah in maxaabiistu heleen hoy, nadaafad, dhar, jiif, cunto, cabitaan iyo jimicsi ku haboon. Xeerka Xabsiyada ee Soomaaliya waxa ku jira qodobo qeexaya xaaladaha maxaabiista, siiba Qodobbka 27-aad (“cuntada maxaabiista”), Qodobka 28-aad (“Dharka maxaabiista”) iyo Qodobka 29-aad (“jiifka maxaabiista”).

Xaaladaha nololeed ee maxaabiista ku jirta Xabsiga Dhexe ee Muqdisho waa xaalado heerkoodu ka hooseeyo heerka ugu hooseeya ee ay dhigayaan sharuucda caalamiga ah iyo kuwa qarankuba. Qaybta xabsiga ee raga lagu xabiso, waxa celcelis ahaan loogu talo galay in qolkiiba lagu xiri karo 50 qof. Qol kasta balaciisu waa 15 x 20 m. oo qiyaas ahaan noqonaya 300 mitir oo isku wareeg ah. Waxana hada qol walba ku jira ilaa 120 maxbuus oo rag ah. Balse xaalada qaybta dumarku waa ay ka duwan tahay. Qaybtaasi waxa uu qolkiiba qaadi kartaa 50 qof. Sidaa awadeed, qaybta dumarku maaha mid buux-dhaafsan; balse waxa walaaca buux-dhaafku ka jiraa dhinaca xabsiga ee ragu ku jiraan, taasi ku kalifaysa maxaabiista in aanay isku mar wada seexan karin waayo ma jirto meel ku wada filan oo ay isku mar wada seexan karaan. Xaaladani waaba kasii xun tahay marka la fiiriyo dhinaca loogu talo-galay caruurta. Waxa ay 32 caruur ahi ku wada xiran yihiin qol dhuuban oo ku filan oo kaliya marka caruurta wada fadhiyaan.

Buux-dhaafka, waxa kale oo u sii dheer baahi culus oo maxaabiistu u qabaan helitaanka biyo nadiif ah, taasi oo u baahan kaalmo uga timaada beesha caalamka.

Xabsiga Dhexe ee Muqdisho ma laha ilo-biyood laga heli karo biyo nadiif ah oo la cabo. Labadii ceel ee xabsigu biyaha ka heli jiray waxaa shaqaynaya ceel kaliya, waxana ceelkaa laga helaa sideed kubik mitir oo biyo ah maalintiiba laakiinse waa biyo aad u dhanaan, oo aan la cabi karin. Sidaa awadeed waxa loo baahan yahay in adeegan tixgalin la siiyo, isla markaana waxa suurtoagal ah in ay lama huraan noqoto in ceel kale meesha laga qodo, loona sameeyo haamo biyaha lagu kaydiyo, oo weliba biyaha lagu sifayn karo iyo dhumaha biyaha qaada.

Iyada oo ay ku xiran tahay xaalada biyaha ee dhulka ku hoos jira iyo meesha uu ku yaalo xabsigu, waxa laga yabaa in loo baahdo mashiin yar oo biyaha sifeeya, oo u gaar ah biyaha la cabayo iyo kuwa lagu isticmaalayo khusheenka cuntada lagu diyaariyo. Hada waxa biyo loogu keena booyad u keenta ilaa 3,500 litir oo biyo ah maalintiiba, oo loogu talo-galay cabitaanka, waxana qiimahoodu yahay 0,005 oo doolar litirkiiba. Xadiga biyaha ee hada xabsigu helaa kuma fila baahida biyaha ee maxaabiista ku jirta, waayo biyaha waxa loo isticmaalaa dhamaan ujeedooyin kale duwan, tusaale ahaan cunto-karinta, cabitaanka, nadaafada, iyo waysada salaada, iwm.

Dadkii laa waraystay markii qiimentan la samaynayay waxa ay sheegeen in biyaha booyadu keentaa ay yihiin kuwo "nadiif ah, oo waliba sahal loo qaadi karo", balse masuuliyiinta xabsigu marnaba ma tijaabin fayyo-qabka biyahaasi.

Qol-xabsiyeed kasta waxa uu leeyahay qoob loogu talo-galay qubayska/dhaqida, iyo hal musqul oo ka dhaxaysa dhamaan maxaabiista. Labadaa meeheed biyaha lagu isticmaalo waxa laga soo dhaamiyaa ceelka. Hase yeeshee, isla biyaha qashinka ee xabsiga waxa lagu sii daayaa bada u dhow xabsiga, sidaa awadeed waxa ay tani sabab u noqon kartaa dhibaatooyin xaga nadaafada ah iyo weliba cudurada faafa oo ka dilaaca.

Maxaabiistu qolalka xabsiga kuma haystaan baaxad ku filan dhowrsanaanta. Tusaale ahaan marka ay isticmaalayaan goobta qubayska ama musqusha, oo ah mid ku dhextaala qolka xabsiga, mana jiraan meelo gaar ah oo maxaabiistu dhigan karaan aaladahooda gaarka ah. Maxaabiistu waxa ay hebeenkii seexdaan dhulka, isla maalintiina halkaasi ayay fariistaan. Maxaabiista lama siiyo sariiro ama furaashyo ay ku jiihsadaan. Waxa kale oo aanay haysan bustayaal iyo go'yaal ay ku seexdaan.

Nadaafada qolalka iyo xabsiga waxa ka masuul ah isla maxaabiista oo kolba koox ayaa nadiifisa. Maxaabiistu waxa ay iska xiran yihiin dharkooda gaarka ah, waxana u keena qoyska iyo qaraabada maxaabiista, ama qaraabada maxbuusyada qaarkood ayaa maxaabiista kale ugu deeqa dharka.

Helitaanka iffiinka iyo hawada maxaabiistu waxa ay ku xiran tahay hadba qeybta ay ku xiran yihiin. Qolalka xabsiga ee u sii jeeda xaga barxada hore waxa iffiinka iyo hawaduba kasoo galaan iridi hore oo ay ku xiran tahay biro garaa'id ah. Guud ahaan waxa kale oo jirta dariishad ku taala gidaarka gadaal ee qolka. Kulka ka dhasha tirada maxaabiista isku badan iyo iyaga oo ku jira qolka ilaa 20-saacadood maalintiiba waxa ay ciriiri galisaa wareega hawada. Balse xaaladu waa kasii xun tahay marka la fiiriyo qolalka la galiyo caruurta ama dadka mudakarka ah ee lagu ciqaabayo

xad-gudubyada dhishibilliinka, waayo labada iridood waxa ay u jeedaan luuqa la maroyo.

Qolalka maxaabiistu ma laha koronto.

Sida ay sheegeen wakiilada ciidamada asluubtu waxa loogu talo-galay in lagu quudiyo maxbuuskiiba hal doolar maalintii. Maxaabiista waxa cuntada la siiyaa sadex jeer maalintiiba. Waxa suurto gal ah in maxaabiistu kasoo baxaan qolka xabsiga oo soo doontaan cuntada. Subaxii (qiyaas ahaan 5-ta subaxnimo) ayaa maxaabiista la siiyaa rooti iyo shaah, qadadii (duhurkii) waxa maxaabiista la siiyaa koob bariis ah ama biinis ah, cashadii (qiyaas ahaan 5-ta galabnimo) waxa la siiyaa saxni masago ah iyo (?)

Masuuliyiinta xabsigu ma siiyaan maxaabiista cunto ku filan oo kala duwan. Cuntada maxaabiista waxa taageera cuntooyin ay qoysaska maxaabiistu soo kariyaan oo keenaan xabsiga, kadibna shaqaalaha xabsiga ayaa u geeya maxaabiista. Hadaba cuntada ciidamada asluubtu bixiyaan oo aan deeqin maxaabiista, marka la fiiriyo xaga xadiga cuntada iyo weliba nafaqo ahaan, waxa ay kaliftaa in maxaabiista cuntada loo keena la wadaagaan maxaabiista kale ee aan cunto looga keenin dibada.

Caadi ahaan waxa cuntada xabsiga dibada ku kariya maxaabiis loo doortay cunto-karinta. Maxaabiista cuntada karisa lama badalo oo jadwal ma laha, waxana dhacda in isla maxaabiistaasu ay maalin walba cuntada u kariyaan dhamaan maxaabiista kale.

Daryeelka caafimaadka

Qodobka 30-aad iyo 31-aad ee Xeerka Xabsiyada 1971 waxa uu dhigayaa nidaamka guud ee in maxaabiistu helaan daryeel caafimaad. Qodobka 30-aad, waxa uu farayaa in "goob kasta oo xabsiya ama dadka lagu xayiro

ay lahaato goob u qaabilsan daryeelka caafimaadka". Qodobka 31-aad waxa dhigayaa in "goob kasta oo xabsi ah ama dadka lagu xayiraa ay lahaato sarkaal u qaabilsan caafimaadka oo ka masuul ah daryeelka caafimaadka ee maxaabiista".

Guud ahaan daryeelka caafimaad ee xabsigu waxa uu u baahan yahay waxqabad baaxad leh. Waxa kale oo Xabsiga Dhexe ee MUqdisho ka taagan mashaakilaad xaga nadaafada ah, taasi oo dhalin karta in ay dilaacaan cudurada faaha. Hase yeeshee mashaakilaadkan waxa loo baajin kari la'yahay oo sabab looga dhigaa in aanu xabsigu haysan dhaqaalaha iyo nidaamka fulineed ee lama huraanka u ah. Sidaa awgeed, waxa iska macruuf ah in ay ka dilaaci karaan cuduro kala duwan, tusaale ahaan cudurada kalooraaha, TBC-ada, malaariyada, infekshanada midhicirka, parasites-ka oo dhamaan ah cuduro halistoodu dul hoganayso Xabsiga. Masuulada xabsigu nooma soo gudbin xog ku saabsan halista cudurka HIV/AIDS ee Xabsiga ka jirta. Baadhitaanka cudurkan waa mid shaqsigu iskii u raadsan karo, balse wakiilada Wasaarada Cadaalada, Diinta iyo Awaqafta iyo weliba Ciidamada Asluubtu waxa ay noo xaqiijiyeen in ay taageeraan oo u fududeeyaan in ay hay'adaha UN-tu maxaabiista u fidiyaan baadhitaanka HIV-ga, iyo weliba in ay maxaabiista siiyaan macluumaadka caafimaad ee ay u baahan yihiin.

Xabsiga Dhexe ee Muqdisho ma laha karaan caafimaad oo daryeeli kara maxaabiista, hadii uu jirana waa mid iska liita oo xadidan. Waxana walaacu ka jiraa in aan xabsigu lahayn qalabka iyo shaqaale u carbisan in ay daryeelaan caafimaadka maxaabiista. Saraakiisha xabsigu waxa ay sheegeen in ay jiraan diiwaan lagu kaydiyo macluumaadka caafimaadka, isla markaana lagu qoro wixii kusoo kordha caafimaadka maxbuusyada. Balse waxa ay tani u muuqataa in macluumaadka noocaas ah lagu qoro

oo kaliya xaanshida waaranka gadaasheeda, waxana lagu qoraa wixii daawooyin ah ee la siiyay iyo wixii daaweyn ah ee maxbuuska loo qabtay, balse waa hadba wixii loo helo ee suurtogalka ah.

Xabsiga Dhexe ee Muqdisho hada ma laha dhakhtar ka hawl-gala xabsiga. Waxana hawlaha caafimaadka u qaabilsan 5 kalkaaliye caafimaad/neeras ah, oo sadex ay yihiin dumar iyo laba rag ah. Dumarka neerasta ahi waxa ay khaas u yihiin kaalmaynta dumarka maxaabiista ah. Qiimeyntan uma suurtogalin in ay cabiraan xirfadaha iyo aqoonta caafimaad ee neerasta ka hawlgasha xabsiga. Hase yeeshee masuuliyiinta xabsigu waxa ay sheegeen in neerasta ka hawl-gala xabsigu ay qaarkood wax ka barten dugsi caafimaad ee Muqdisho ku ooli jiray labaatan sano ka hor.

Xabsigu ma laha goob caafimaad, mana jiraan daawooyin khaas ah oo lagu daaweeyo maxaabiista. Waxa kaliya ee xabsiga yaalaa waa sanduuqa loogu talo-galay gargaarka degdega ah, waana waxa kaliya ee caafimaad ahaan u diyaar ah xanuun kasta oo ku dhici kara maxaabiis gaaraysa ilaa 722 maxbuus.

Ma aanaan helin wax macluumaad ah oo ku saabsan sida loo daaweeyo maxaabiista maanka ka jiran iyo kuwa xaga garaadka ka liita. Xiligii dawladii Siyaad Barre waxaa jiray cusbitaalka dadweynaha oo u khaas ahaa dadka maanka ka jiran iyo kuwa garaadka ka liita. Waxana, sidoo kale, cusbitaalkaasi lagu xayiri jiray maxaabiista maxkamadu soo cadayso in aanay lahayn karaan ama garaad ku filan oo sharciga lagula tiigsado.

Dhamaan dadkii aanu waraysanay midna walaac kama muujin isticmaalka maandooriyayaasha ee xabsiga dhexdiisa. Waxana ay u muuqataa in maxaabiista isticmaala maandooriyayaashu ay ku yar yihiin xabsiga. Istickmaalka maandooriyayaasha la isku mudo waxay u muuqataa mid

iska kooban, balse Saraakiisha Xabsigu ariintan kama shegin macluumaad khaas ah.

Maxaabiista iyo xiriirka dibada

Maxaabiistu xiriirka ay la leeyihiin dibadu maaha mid joogto ah, ama ku filan. Xabsiguna macluumaad kooban ayuu naga siiyay nidaamkan. Balse waxa iska macruuf ah in loo baahan yahay in maxaabiista loo kordhiyo xiriirka dibada si markaasi loogu diyaariyo la qabsiga iyo la-dhaqanka bulshada marka xabsiga laga sii daayo.

Sharcigu waxa uu si quman u qeexayaa in la dhiirgaliyo oo la sahlo xiriirka maxaabiista iyo qoysaskooda 31, tusaale ahaan booqashooyinka xabsiga iyo weliba xiriirka waraaqaha³².

Wakiilada Wasaarada Cadaalada, Diinta iyo Awqaafu waxa ay xaqiijiyeen in shaqaalaha hay'adaha kaalmada sharcigu, tusaale ahaan 'Somali Women Development Center (SWDC)', 'Somali Women Layers Association (SWLA)', Consortium of Grass Root Women Organizations (COGWO) iyo Community Children organization (COCO, oo ah hay'ado samo-fal oo aan dawli ahayn, oo ay badanaa maalgaliyaan maalgaliyayaal iyo ururo caalami ah, ay maalin walba soo booqdaan maxaabiista iyada oo aan wax xayiraad ah lagy xidhin). Hase yeeshee masuuliyiinta xabsigu ma aanay noo sheegin macluumaad lagu kalsoonaan karo oo xaqiijin kara tirada maxaabiista ee kaalmo sharciyeed ka heshay ururadaas soo booqda xabsiga.

Caadi ahaan, maxaabiista waxa lasoo booqan karaa inta u dhaxaysa 8 subaxnimo ilaa 5 galabnimo maalin kasta, kadib marka uu booqashada ogolaado Taliyaha Xabsigu. Waxana inta badan maxaabiistu kula kulmaan

cida soo booqatay qol loogu talo-galay booqashada, mana jiraan wax xayndaab ah oo kula dhexeeya maxbuuska iyo cida soo booqatay. Balse qolka booqashada waxa jooga waardiye u jooga in uu hubiyo in aan maxbuuska iyo cida soo booqatay isku gudbin wax madnuuc ah. Waxana waayo hore dhacday dhacdooyin dadka soo booqday maandooriyayaal u keeneen maxaabiista. Wakiilada cadaaladu waxa kale oo ay xaqiijiyeen in aan xabsigu ogolaan galmada isu-taga ee lamaanayaasha, in kasta oo aanay jirin xeer madnuucaya, mase la ogola in xabsiga dhexdiisa lamaanahu iskugu galmoodaan.

Qanuun ahaan, hanaanka maamulka iyo weliba wareegtooyin ayaa fasaxaya in maxaabiistu qoraalo u diri karaan, kana heli karaan xiriirka dibada, Balse waxaa maxaabiista si quman uga madnuuca ah in ay isticmaalaan telefoonada gacanta lagu qaato/mobile-ka.

Maamulka Xabsiga

Qodobada 25-aad iyo 26-aad ee Xeerka Xabsiyada 1971 waxa uu dhigataa nidaamka "shaqaalaysiinta maxaabiista". Qodobka 25-aad waxa uu qeexayaa in "dhamaan maxaabiista lagu xukumay fal-dambiyeed, hadii caafimaadkoodu saamaxayo, in ay waajib ku tahay in ay ka shaqeeyaan xabsiga dhexdiisa ama dibadiisaba". Isla qodobkanu waxa uu sii qeexayaa hanaanka shaqo ee khuseeya maxaabiista qaarkood, tusaale ahaan dumarka iyo caruurta aan qaan-qaarin. Qodobka 26-aad waxa uu tibaaxayaa in "*maxaabiista xukuman... ee shaqada qabta la siiyo abaal-marinta shaqadooda*".

Maxaabiista ku jirta Xabsiga Dhexe ee Muqdisho hada ma qabtaan wax shaqo ah, marka laga reebo maxaabiista qabta hawlaha cunto karinta ee xabsiga iyo weliba kuwa guta hawlaha nadaafada ee qolalka,

musqulaha iyo goobaha kale ee la wadaago. Waxa kale oo aan xabsiga ka jirin warshado, iyo beero maxaabiistu ka shaqayn karto. Markaasi waa in muhiimada la siiyaa sidii loo asaasi lahaa maamul wacan oo warshadeed, oo ay si haboon u maalgaliso Dawlada Federaalku iyo beesha caalamku, lagana taageero xaga qalabka, tabo-barada iyo kormeerida mashruucyada noocan ah. Marka laga reebo dhuumaha biyaha ee la rabo in ay biyo nadiif ah u keenaan maxaabiista iyo shaqaalaha, waxa kale oo loo baahan yahay hanaan kale oo soo gudbin kara biyo joogto ah (aan dhanaan ahayn) oo lagu waraabin karo beerta loo abuuri karo xabsiga, beertaasi oo noqon karta mid waarta hadii biyahaa loo helo. Hase yeeshee, xiligii qiimeynta, khabiiradu waxa ay shaki ka muujiyeen in goobta xabsigu ku yaalo laga suubin karo beer, waayo meesha uu ku yaalo xabsigu waa meel ciideedu tahay burciid.

Waano-celin (counselling), Mashruucyada Dhaqan-celinta iyo U-diyarinta Sii-daynta

Qodobka 32-aad ee Xeerka Xabsiyada 1971 waxa uu dhigayaa nidaamka xaquuqda maxaabiista ee xaga waxbarashada, waxana uu xusayaa “in Taliyaha xabsigu qaado talaabo kasta oo lama huraan ah si uu maxaabiista ugu helo fasalo waxbarasho, isla markaana u saamaxo in ay wax bartaan wakhtiga ay firaagada yihiin, isla markaana bartaan farsamooyinka”.

Hadaba waxa aan shaki ku jirin in ay aad u muhiim tahay in Dawlada Soomaaliyeed iyo Beesha Caalamku in ay iska kaashadaan sidii maxaabiita looga kaalmayn lahaa mashruucyo iyo sahlo lagu kobcinayo waxbarashada iyo farsamada si markaasi maxaabiista loogu sahlo la-qabsiga bulshada marka lasii daayo.

Hada xabsigu uma fidiyo maxaabiista borogaraamyo waxbarasho, mana jiraan macalimiin wax barta Ciidamada Asluubta oo ka socda Wasaarada Waxbarashada. Wakhtigii Dawladii Siyaad Bare waxa jiray borogaraamyo waxbarasho oo joogto ah oo maxaabiista wax loogu bari jiray, taasi oo la mid ahayd sida dugsiyada caadiga ah wax looga barto. Waxbarashada kaliya ee maxaabiistu hada ka heli karaan xabsiga waa waxbarashada diinta. Sida ay sheegeen masuuliyiinta xabsigu waxa borogaraamkaa diiniga ah bixiya Sheekh ay soo magacawday Wasaarada Cadaalada, Diinta iyo Awaqafta. Sheekhaasi oo xabsiga soo booqada sadex jeer todobaadkiiba, kaasi oo waxbarsho guud maxaabiista ugu fidiya qolalka xabsiga. Balse maxaabiista dumarku ma helaan waxbarashadan oo kale, iyo mid kale oo u dhiganta.

Xabsigu ma laha rugta kutubta ama madxaf, mana jiraan qol loogu talo-galay in fasal ahaan wax lagu barto.

Xabsiga Dhexe ee Muqdisho ma laha borogaraamyo kale oo loogu talo-galay dhaqan-celinta ama waxbarashada maxaabiista, xataa ma laha kuwo loogu talo-galay dhalinta/caruurta.

Talo-bixinta lagu soo jeediyay waxa ka mid ah in maxaabiista xirfada leh ee wax dhigi kara, in lagu dhiirigaliyo in ay wax baraan maxaabiista kale. Hase yeeshee heerka aqoonta ee maxaabiista lagama hayo macluumaad sugan waayo marka maxaabiista la keeno xabsiga lagama qoro macluumaad ku filan.

Bad-qabka iyo Amaanka

Mudadan lagu gudo jiro qiimeynta, Maamulka Xabsigu Dhexe ee Muqdisho uma arkaan in walaac weyni ka jiro xaga badqabka iyo amaanka xabsiga.

Maamulku waxa kale oo ay sheegeen in sadexdii sano ee lasoo dhaafay in aanay xabsiga ka dhicin mashaakilaad waaweyn oo la xiriira shaqo joojin qorshaysan/ama mid aan qorshaysnayn, kacdoono, dagaal ka dhexeeya maxaabiista, ama dirir ku aadan shaqaalaha xabsiga. Sanadkii 2011 waxaa dhintay hal maxbuus oo isku dayay in uu baxsado balse waxa toogtay waardiyaha xabsiga. Taliyaha xabsigu waxa uu cadeeyay in waardiyayaasha fuushan taalooyinka-waardiya oo kaliya loo dhiibo rasaasta/hub-ka, waxana qiyaas ahaan shaqadaa u heegan ah 20 waardiye. Hawlaha amaanka waxa kale oo sahla maxaabiista laftigooda oo isku qaybiya kooxo isla markaana u adeega sidii “gudiyaha maxaabiis”. Qaar ka mid ah wakiilada maxaabiista iyo xubnaha gudiyadaa waxa toos u magacaaba shaqaalaha xabsiga, magacaabidaasi oo loo fiiriyo kaalinta iyo ixtiraamka maxbuuska la magacaabaya ka kasbaday maxbuusyada kale.

Hase yeeshee maalintii 20-kii bishii Abriil 2012, waxa ka dhacay isku-day xabsi jabin, taasi oo keentay in hubka la isticmaalo waxana ku dhaawacmay dhowr qof oo ay qaar yihiin shaqaalaha xabsiga. Warbixinada rasmiga ah ee Xabsiga waxa lagu xusay in aan maalintaasi maxbuusyo ka baxsan xabsiga, laakiinse ilo-wareedyo kale ayaa sheegaya warar kale oo warkaa ka duwan. Hadaba waxa la oran karaa dhibaatooyinkan ay ciidamada asluubtu la tacaalayaan waxa ay horseed ka tahay buux-dhaafka iyo waliba baahida xaga tabo-barka ee ciidamada asluubta.

Maxaabiista ku dhex geeryoota xabsiga

Kooxdan qiimeynta uma suurto galin in ya helaan xog ku saabsan tirada maxaabiista ah ee ku dhex geeryootay xabsiga ama sababta keentay geerida. Taliyaha xabsigu waxa uu sheegay in sanadkii 2011 ay xabsiga

ku dhex geeryoodeen sadex maxbuus oo u dhintay cudurka kalooraha, hal maxbuus oo u dhintay cudurka HIV/AIDS iyo hal maxbuus oo ay dileen laba maxbuus oo kale, kuwaasi oo u xirnaa sababo la xiriira dil ay hore u geysteen, oo dil ku xukunaa. Waxa kale oo jira in sadexdii sano ee lasoo dhaafay, in laba iyo toban maxbuus oo dil ku xukumay sababtoo ah waxay xubno ka ahaayeen Al Shabaab, ayaa waxa dilkooda lagu fuliyay isla xayndaabka xabsiga dhexdiisa, meeshaasi oo ku aadan inta u dhaxaysa dakeda iyo maadaarka Muqdisho. Waxana xukunka dilkaasi soo ansaxiyay Madaxweyne Sheik Sharif Sheik Ahmed, kadib markii uu codsi ka helay Qareenka Guud (Attorney General), sida waafaqsan nidaamka xeerka qaranka. Waxana xukunka dilkaa fuliyay ciidamada asluubta. Xabnaha Qiimeyntan uma suuto-galin in ay macluumaad dheeraad ah ama faahfaahin ka helaan dilalka sharciyeed ee la fuliyay.

Habka Maamulka Gudaha iyo Dhishibiliinka ee Xabsiga

Taliyaha Xabsiga Dhexe ee Muqdisho waxa uu sheegey in aanay xabsiga ka jirin ururo iyo gudiyo ay maxaabiistu leedahay oo si nidaamsan loo abaabulay oo leh ujedooyin cayiman. Laakiinse waxa uu xaqiijiyay in ay jiraan gudiyo aan rasmi ahayn oo ka turjuma amaanka iyo danaha maxaabiista. Gudiyadaasi waxa ay door ka qaataan xoojinta nidaamka, dhishibiliinka xabsiga, iyo weliba xalinta khilaafaadka ka dhex abuurma maxaabiista. Waxana gudiyadaasi laga soo xulaa xubnaha maxaabiista ah ee ugu firfircoon, waxana si aan rasmi ahayn loogu doortaa in ay af-hayeen u noqdaan gudiyadaasi maxaabiista. Xabnaha gudiyadaasi awood uma laha in ay talaabo ka qaadaan xubnaha maxaabiista ee dhishibiliinka ku xad-gudba, mana laha awoodo gaar ah oo ay maxaabiista kale ku amraan.

Maxaabiista ku xad-gudubta dhishibiliinka waxa awood u leh oo kaliya in ay talaabo ka qaadaan Ciidamada Asluubta, isla markaana waxa kormeera Taliyaha Xabsiga. Qaybta V³³ ee Xeerka Maxaabiista 1971, waxa uu dhigayaa nidaamka hanaanka dhishibiliinka iyo xad-gudubyada dhishibiliinka ka baxsan iyo ciqaabaha lagu mutaysan karo.

Qodobka 47-aad iyo 48-aad waxa ku taxan liiska dambiyada sahlan iyo kuwa culus ee maxaabiista laga madnuucay. Waxana ciqaabta xad-gudubyada loo xilsaari karaa gudi³⁴ soo cayimi doonta talaabooyinka³⁵ laga qaadi doono wixii xad-gudub ee maxaabiistu falaan. Xabsiga Dhexe ee Muqdisho waxa ugu badan xad-gudubyada dhishibiliinka ee maxaabiistu galaan kuwa la xiriira amar-diido, maxaabiista dagaalama ee dirir ama hatigaad dhexmarto. Taliyaha Xabsigu waxa uu sheegay in maxaabiista gala xad-gudubyo xaga dhishibiliinka ah, kuwo fudud ama culus, in aan marnaba lagu qaadin ciqaab dil ah. Balse talaabooyinka ugu badan ee lagu ciqaabo maxaabiistu waa kuwan hoos ku qoran:

- a Cuntada oo laga xadido;
- b Darajada/dhibcaha "akhlaaqda wacan" oo laga dhimo;
- c Qol cidlo ah lagu xiro.

Taliyaha Xabsigu waxa uu sheegay in maxbuus kasta oo laga qaado talaabo dhishibiliinka ku saabsan, in macluumaadka talaabadasi lagu qoro gadaasha xaanshida waaranka ee maxbuuska ama xaanshida amarka xabsiga. Hase yeeshee ma jiraan hanaan rasmi ah oo talaabooyinka dhishibiliinka lagu diiwaangaliyo ama fuliyo: Marka ciidamada asluubtu arkaan xad-gudub ama loo soo sheego waxa ay u gudbiyaan Taliya Xabsiga, kadibna Taliyaha ayaa go'aan ka gaara talaabada laga qaadayo. Laakiinse uma muuqato in uu jiro hanaan sugan oo maxaabiistu

kusoo gudbin karto cabashooyinkooda, gaar ahaan hadii ay rabaan in ay ka cawdaan in dib loo fiiriyo talaabo dhishibiliin oo lagu ciqaabay.

Sida ay sheegeen shaqaalaha Asluubtu, ma jiraan maxaabiis lagu hayay qofka cidlada ah wax ka badan shan iyo toban maalmood. Maxbuuska lagu xukumo qolka cidlada ah waxa loo ogol yahay in uu qolka kasoo yara baxo laba jeer maalintii, balse aan markiiba ka badnayn laba saacadood; subaxii iyo galabtii. Maxaabiista kaligood cidlada lagu xiro ayaaba iyagu wakhti ahaan kasii yara badan mudada ay qolka kasoo baxaan, waayo maxaabiista caadiga ahi waxa ay qolka kasoo baxaan sadex jeer (sadox jeer oo min hal saac ah maalintii). Qolalka Xabsiga Dhexe ee Muqdisho waa kuwo aad u yaryar, isla markaana hawada ayaa aad ugu yar.

Noocyada Maxaabiista Gaarka ah

Dumarka

Maxaabiista dumarka ah, kuwa xukuman iyo kuwa xukun sugayaasha ah, waxa ay ku jiraan qol u gaar ah, waxana waardiyeeya dumar. Maxaabiistaasi da'doodu waxa ay u dhaxaysaa 15 ilaa 60, kuwaasi oo la sheegay in ay ku jiraan sadex maxbuus oo da'doodu ka yar tahay 18 jir. Qolka ay ku jiraan waa mid weyn, oo hawada iyo ilayska cadceeduba ku filan yihiin. Marka loo fiiriyo qaybaha kale ee xabsiga, qolka dumarku ku jiraan waa mid ku filan maxaabiista ku jira waayo tiradoodu waa ka yar tahay tani raga (12 markii aanu booqanay), laakiinse xaaladaha kale ay ku sugan yihiin waa mid la mid ah xaaladaha maxaabiista kale ee xabsiga kula jirta.

33 Articles 46-58, Part V, of the 1971 Prison Law.

34 Ibid. Article 49.

35 Ibid. Articles 50-55.

Qolka farniijar/alaabo ma taalo, tusaale ahaan aaladaha jifka, isla markaana ma laha meel la dhigto aaladaha ama hantida shaqsiyadeed. Maxaabiistu waxa ay ku dhex maydhaan isla qolka dhexdiisa, waxayna meel gees ah kaga beegan tahay qolka, waxana ka xiga gidaar, mana laha irid uu qofka qubaysanayaa iska soo xiri karo. Mana laha biyo socda ee maxaabiista ayaa kasoo qaato taangiyo kuna isticmaala musqusha iyo weliba qubayska. Xaaladada gidaarada iyo meelaha la maro aad ayay u xun tahay, mana ka muuqato in dayactir lagu sameeyay.

Laakiinse waxa xasuusin mudan in Maamulka Xabsigu ay dhawaan dhamaystireen dhisme cusub oo ku yaala dhinaca dumarka, oo loogu talo-galay in laga dhigo workshop-ka dumarka maxaabiista ah. In kasta oo tani tahay horumar wacan oo xabsigani aad ugu baahnaa marka la eego xaalada maxaabiisu ku sugan tahay. Balse waxa lasoo jeediyay in dhismahan cusub maxaabiista hoy looga dhigo isla markaana workshop-ka lagu qabto dhismayaasha duuga ah ee xabsiga. Maxaabiista qaarkood waxa ka muuqday calaamado in ay xanuuno qabaan, tusaale ahaan xanuunada maqaarka, maxaabiista qaar ayaa aad caato lagu tilmaamay. Maxaabiistu waxa ay noo sheegeen in aan Maamulka Xabsigu maxaabiista siinin waxyaabaha la isku nadiifiyo.

Bishii Maarso 2012, koox u ka shaqaysa xuquuqda aadamaha ayaa fursad u heshay in ay la kulmaan dumarka maxaabiista ah ee ku jirta xabsiga, waxana ay kooxdaasi waraysiyo dahsoon ka qaaday 12 dumar ah oo markaasi xabsiga ku jiray. Maxaabiistaasi midna ma aanay awoodin in ay sheegto khaas ahaan dambiga lagu soo xiray, waxana ay qaarkood sheegeen in aanay xataa ogayn sababta loo soo xiray. Maxaabiistaasi midna ma aanu lahayn qareen gaar ah ama mid dadweyne oo u dooda,

isla markaana badankoodu ma ogsoonayn xaquuqdooda, tusaale ahaan xuquuqda rafcaanka. Kooxdaasu waxa kale oo ay soo ogaadeen:

- In dumarka lagu soo xiro waxyaabo aanu sharci ugu tixgalin dambiyo. Tusaale ahaan, waxa jiray laba maxbuus oo ay maxkamada degmada ee Hamarweine ay mid ku xukunta 4 bilood iyo ka kalana 3 sanadood sababtoo ah “amar-diido”. Waxana xukunka loo cuskaday Qodobka 430-aad ee Penal Code-ka oo dhigaya “dhaqan-xumo qoyska dhexdiisa”. Waxana xusid mudan in Qodobkan 430-aa uu ku saabsan yahay ficilada la xiriira diidmada “waajibaadka awoodaha waalidnimo, masuuliyada caruurta ama guurka”, isla markaana aanu khusayn arinta dumarkan lagu xukumay, kuwaasi oo aan sharciiga Soomaaliya ku ahayn dambi. Waxa kale oo xusid mudan in qofka dumarka ah ee lagu xukumay sadexda sano aanay sharciiga waafaqsanayn waayo Qodobkan 430-aad xukunkiisu waa ilaa hal sano oo xarig ah.
- Baahsanaanta awooda sharci ee maxkamada ciidamada. Maxkamadanu waxa ay xukuntay lix maxbuus oo lagu soo eedeeyay in ay xiriir la leeyihiin Al Shabaab, ama hawl-galo u fulinayeen kooxaha falaagada ah. Xukumada ciqaabta ee ay maxkamadaasu xukuntay waxa ay u dhexeeyaan hal sano ilaa 25 sano. Dadkii la waraystay waxa ay sheegeen in xukunadaasi maxkamadu qaadaysay hal maalin oo kali ah.
- In dib loo xaqiijiyo in masuuliyada dambigu saaran yahay qofkii gaysta dambigaasi. Waayo dumarka qaarkood ayaa ku dooday in dambiga lagu soo xiray uu geystay ninkooda ama xubno kale oo qoyska ka mid ah. Tusaale ahaan, dumarka maxaabiista ah ee ay Maxkamada ciidanku xukuntay waxa ay qaarkood ku doodeen in

aanay wax xiriir ah la lahayn *Al Shabaab*, balse waa lagu xukumay waayo ninkeeda oo ka mid ah dagaalyahanada *Al Shabaab*. Maxbuusad kale waxa ay sheegtay in ay u xiran tahay markii walaalkeed nin dilay kadibna uu baxsaday.

- Laba dumar ah waxa lagu soo xiray sabab la xiriirta in ay ragooda gacan-saareen. Balse labadaadsi dumar ahi waxa ay sheegeen in ragoodu ku hayeen dilmo iyo weliba cabsigalin maanka ah, taasi oo ku kaliftay in ay falaan damiyada lagu soo eedeeyay.

Caruurta

Haykalka sharciga nidaaminaya caruurta fal-dambiyeedka geysta, waxa uu yahay sharci duugoobay oo u baahan in wax laga badalo, mana la jaanqaadi karo Sharciga Caalamiga ah ee Xaquuqda Caruurta (Convention on the Rights of the Child) iyo weliba sharciyada kale ee caalamiga ah ee la xiriira caruurta.

Xeerka Cadaalada Caruurta ee 1970 (The 1970 Juvenile Justice Act) waa xeerka kaliya ee sharciga Soomaaliya ee khuseeya nidaamka, maamulka iyo xabsiyada caruurta.

Sida kor ku xusan, Soomaaliya xubin kama aha Sharciga Caalamiga ah ee Caruurta iyo weliba baratakoolka Ikhtiyaariga ah ee la socda (Convention on the Rights of the Child (CRC) or its Optional Protocols). Qodobka 59-aad ee Penal Code-ka, caruurta da'doodu ka yar tahay 14-sano, kama masuul noqon karaan dambi. Sidaa awadeed qofka waxa dambi lagu soo oogi karaa marka uu gaaro 14-sano. Mana jiraan qodobbo gaar ah oo nidaaminaya daruufaha gaarka ah ee loo tixgalinayo caruurta xabsiyada lagu xiro ama xayiro. Laakiinse Qodobka 60-aad ee Penal Code-ku waxa uu dhigayaa in caruurta da'doodu u dhaxayso 14 sano ilaa 18 sano – in

la xayiri karo hadii lasoo xiro ama lagu soo xukumo dambi halis ah oo ay faleen. Balse mudadii qiimeynta maamulka Xabsiga ma aanay soo qeexin damiyada loo tixgaliyo dambi halis ah. Sidoo kale waxaa jirta in sharcigu arrimahan khuseeyaa uu ka gaabiyay xaqiijinta da'da ilmaha ee lagu xukumi karo xabsi ama xayiraad. Ugu dambayntii, caruurta lagu xukumo dambiyo fudud oo ay galeen, waxa lagu sii deyn karaa cafis, balse waa marka cida ka masuulka ahi ay damaanad qaadaan sharuudaha looga baahdo.

Marka la rabo in ilmaha la xaqiijiyo da'diisa, ma jiro hanaan rasmi ah ama la isku waafaqay oo ay isticmaalaan xubnaha ama bahda sharcigu, gaar ahaan garsoorayaashu. Soomaaliya ma laha hanaanka lagu diiwaangaliyo dhalashada ilmaha, Isla markaana waxa da'da ilmaha soo xaqiijiya hawl-wadeeno aan khibrad usii lahayn, isla markaana waa mid iska qiyaas uun ku socota waayo ma jiraan heer iyo sharuudo la isla meel-dhigay ama waafaqay heerka caalamiga ah ee da'da lagu qiyaaso. Sidaa awgeed, waxa inta badan dhacda in go'aamadaasi caruurta u horseedaan halis iyo cadaalad daro. Badanaa waxaa da'da ilmaha go'aamiya qareenka dacwada oogaya, balse hadii lagu murmo waxa go'aanka kama dambaysta ah ka gaara garsooraha maxkamada. Hase yeeshee, qareenka dacwada soo oogaya iyo garsooraha maxkamada midna iskumo hawlo xaqiiqda khabirada khibrada u leh ama tusmooyinka caalamiga ah ee ka kaalmayn kara go'aaminta qiyaasida da'da caruurta. Mudadii qiimeynta Maamulka Xabsigu waxa uu sheegay in maxkamada uu badanaa ka kaalmeeyo dhakhtar sidii ay u go'aamin lahayd da'da ilmaha. Hase yeeshee maamulku ma aanay awoodin in ay kala cadeeyaan tusmooyinka iyo qiyaasaha uu dhakhtarkaasi isticmaalo marka go'aan laga gaarayo qiyaasta da'da ilmaha. Sidaa awadeed, go'aamadan la

iska qiyaaso da'da ilmaha waxa ay halis iyo walaac ku tahay cadaalada caruurta.

Ma jiraan xabsiyo khaas ah oo loogu talo-galay caruurta dambiyada-fala. Isla markaana caruurta falalka dambiyada geysta waxa isku meel lagula xiraa maxaabiista mudakarka ah. In kasta oo sharcigu dhigayo in caruurta lagu xiro meel ka soocan meelaha dadka waaweyn, hadana ilaa hada caruurta, rag iyo dumarba, waxa lagu hayaa isla meesha lagu hayo dadka waaweyn. Waxana walaac khaas ahi ka jiraa in aanay jirin meel gaar ah oo lagu xiro gabdhaha. Hadaba tani waxa ay halis wayn oo xaga jismiga iyo saykoolajiga ku haysaa caruurta xabsiyadaa lagu xiro. Mudadii qiimeyntan la waday waxa ay maamulka Soomaaliyeed sheegeen in waayo hore ay dhacday caruur dirir loogu gaystay xabsiga dhexdiisa, oo xataa qaar lagu dilay. Waxa kale oo jira cadaymo muujinayaa in caruurta cagaha laga xiro, oo lagu layliyo xabsiga dhexdiisa, in kasta oo falalka noocan ahi uu madnuucay sharciga khuseeyaa.

Caruurta xabsiyada lagu xiro ama lagu xayiraa ma helaan hawl-wadeenada saykoolajiga, adeege bulsho ama adeegyo kale oo baahidooda u heegan. Tusaale ahaan ma helaan mashruucyo loogu talo-galay waxbarashadooda, tabo-barkooda ama adeegyo u diyaariya sii deyntooda.

Ugu dambayntii ma jiraan adeegyada talo-bixinta ee dadka dambiyada fala, ama u khaas ah caruurta, mana jiraan xarumo furan oo loogu talo-galay dhaqan-celinta caruurta, wadanka oo dhan kama jiraan.

Guud ahaan, waa iska macruuf in xaaladaha caruurta ee xabsiga ku jiraa ay tahay mid bani-aadamimada ka baxsan, isla markaana xad-gudub ku ah sharciyada caalamiga ah iyo kuwan dawladu ansaxisay, si ay u

waafaqdo heshiisyada caalamiga ah ee qeexaya heerarka ugu hooseeya oo ku waajibka ah in dawladaha si loo fixgaliyo xaaladaha caruurta lagu xayiro ama lagu xiro xabsiyada.

Habka Maamulka

Miisaaniyada, Qandaraasyada iyo Maamulka Shaqaalaha

Xubnaha qiimeyntanu waxa ay heleen oo kaliya macluumaad iska xadidan oo ku saabsan qaab-dhismeedka maamulka iyo miisaaniyada Ciidamada Asluubta. Bishii Maarso 2012, waxa la sheegay in tirada Ciidamada Asluubtu yihiin sadex boqol iyo konton qof: sadex boqol waa rag, kontonka kale waa dumar. In kasta oo ciidamada asluubtu ay yihiin hay'ad madani ah oo hoos timaada Wasaarada Cadaalada, Diinta iyo Awqaafta, balse hadana waxay leeyihiin qaabkii ciidamada iyo darajooyin, waxana ay leeyihiin nidaamka amarada ciidamada.

Ciidamada Asluubtu malaha miisaaniyad joogto ah oo sanad walba loogu qoondeeyo kharashyada ku baxaya. Sidaa awadeed ma jiro diiwaan khaas ah oo laga heli karo kharashyada ku baxa xabsiga. Ciidamada Asluubta ayaa miisaaniyada ay codsanayaan u gudbiya Wasaarada Cadaalada, Diinta iyo Awqaafta, kadibna wasaarada ayaa usii gudbisa Wasaarada Maaliyada. Marka cosdiga miisaaniyada la diyaarinayo, waxa maasaaniyada lagu saleeyaa inta maxbuus ee ku xiran Xabsiga Dhexe ee Muqdisho. Ciidamada Asluubtu waxa ay ku xisaabtamaan in hal doolar maalin walba loo qorsheeyo maxbuuskiiba. Waxa kale oo u qorshaysan in askari kasta oo ka tirsan Ciidamada Asluubta uu mushaharkiisu yahay 100 doolar bishiiba. Kadib sanad xisaabeed kasta, lama soo gudbiyo waragalin ku saabsan sida miisaaniyada loo sii qaybiyay ama sida kharashyadu u kala baxeen.

Istaatikiska

Si horumar iyo dibu qaabayn loogu sameeyo xabsiyada waxa lama huraan ah in la sugo xogta ku saabsan tirada xabsiyada ee wadanka ka jira, xaalada maxaabiista ku jirta iyo weliba ururinta macluumaadka saxda ah ee xabsiyada. Waxa iska liidata ama aan jirin karaanka in Ciidamada Asluubtu soo ururin karaan xogta iyo istaatikiska ku saabsan tirada maxaabiista iyo hawl-galada xabsiga. Waxana loo baahan yahay in Ciidamada Asluubtu soo gudbiyaan warbixino joogto ah iyo istaatiko ku saabsan xaaladaha guud ee maxaabiista. Ilaa hada, waxaan jirin karaanka in xogtaasi loogu soo ururiyo si habaysan oo cilmiyaysan.

Talo-bixinta

Ilaa hada Dawladda Faderaalka ee Ku-meelgaarka ahi ma aanay soo saarin istaraatajiyo baahsan oo guud ahaan dib-loogu qaabaynayo cadaalada ciqaabta dambiyada, oo ay qeyb ka tahay waaxda xabsiyada. Sida kasoo if-baxday qiimeyntan waxa aad loogu baahan yahay qorshe mudo dheer oo degdeg loo hirgaliyo. Si loo kobciyo aqoonta xirfadeed ee shaqaalaha xabiga (shaqaalaha caadiga ah iyo maamulka sare labadaba) waxa loo baahan yahay in qorshaha horumarinta xabsiyada ay xuduntiisu noqoto sidii loo horumarin lahaa horumarinta shaqaalaha, heerka masuuliyadeed ee shaqaalaha (tusaale ahaan in la sameeyo hanaanka cabashooyinka loo soo gudbin karo iyo sida warbixinada xisaab celinta loo diyaariyo), iyo hanaanka loo maareeyo hantida iyo sahalada. Xaga dhaqan-celinta maxaabiista, waxa aad loogu baahan yahay in la hirgaliyo qorshayaal loogu talo-galay koncinta tabobarida iyo aqoonta maxaabiista, dayactirka hoyga lagu hayo maxaabiista, lana wanaajiyo daryeelka caafimaadka, nafaqada, xiriirka iyo weliba adeegyada nashadaadka maxaabiista. Isla markaana loo abuurto mashaariic sahla sidii maxaabiistu bulshada ula

qabsan lahaayeen marka ay xabsigooda dhamaystaan. Waxa kale oo aad loogu baahan yahay in la abuurto mashruuc gaar ah oo loogu talo-galay dhaqan-celinta caruurta oo u gaar ah caruurta da'doodu ka yar tahay 18-jir.

Kobcinta Karaanka, Aqoonta iyo Masuuliyada Shaqaalaha Xabsiyada

Qodobka kooban oo sharciya wadanka ka mid ah ayaa si xadidan u xusay kobcinta aqoonta shaqaalaha xabsiyada. Sidoo kale miisaaniyada iyo sahalada loo qoondeeyay waa mid aad uga hoosaysa in ay wax weyn ka badasho kobcinta aqoonta Ciidamada Asluubta. Sidaa awadeed waxa loo baahan yahay in la kordhiyo maalgalinta si loo kasbado shaqaale cusub iyo kuwo sare oo xirfad u leh shaqadooda, isla markaana lagu kabo shaqaale cusub oo rag iyo dumar leh. Tani ayaana ah wadada kaliya ee horseedi karta horumarka waaxda xabsiyada ee Soomaaliya. Waxa kale oo loo baahan yahay shaqaale asluubeed takhasus gaar ah u leh sida loo dhaqan-celiyo caruurta xeerka ciqaabta lala tiigsado.

Muhiimadaha loo baahan yahay waxa ka mid ah in sarkaalada sare ee xabsiyada la siiyo tabo-baro kala duwan oo ku saabsan, tusaale ahaan koorsooyinka lagu barto maamulka, iyo weliba in la siiyo fursado waayo aragnimo oo ay kusoo arkaan masuulada sare ee ka taliya xabsiyada kale ee Afrika. Waxa kale oo loo baahan yahay in dib looga wada tashado manhajka guud ee tabobarada xabsiga. Hadii kale waxa loo baahan yahay in la aasaaso hanaan cusub oo loogu talo-galay tabobarada loo fidinayo shaqaalaha cusub, iyo weliba shaqaalaha hada shaqeeya.

Horumarinta Habka Maamulka Macluumaadka

Waxa aad loogu baahan yahay in la aasaaso hanaan sugan oo suurtogalin kara kormeerida, qiimaynta iyo kaydinta macluumaadka. Waxa kale oo ciidamada asluubtu u baahan yihiin in ay helaan aaladaha IT-ga oo u sahli kara kaydinta xogta biometric-ga, isla markaana in la baro sida qalabkaa loo isticmaalo.

Borogaraamada Dhaqan-celinta iyo Tabo-barashada Farsamooyinka

Beesha caalamku waa inay ugu deeqdaa Ciidamada Asluubta wixii taageero ah ee lama huraanka ah eek u aadan abuurida borogaraamyo wax-ku-ool ah oo loogu talo galay dhaqan-celinta maxaabiista iyo dadka lasoo xayiro. Gaar ahaan waa in xooga la saaro sidii maxaabiista loo siin lahaa waxbarasho aasaasi ah iyo mid heer sare ah oo loogu talo-galay kolba heerka aqoonta ay u baahan yihiin. Sidoo kale borogaraamada barashada farsamooyinka waa in la abuur, laguna taageero qalabka lama huraanka u ah tabobarada. Sidaa awadeed waxa talo-bixinta ku jirta in xabsiga loo sameeyo warshado (iyo beero), iyo weliba istaraatajiyo hufan oo suuq-geyneed (taasi oo ay ku jiro farsamada iyo dhaaqaalaha loo baahan yahay si borogaraamada looga sameeyo xabsiyada). Waxana loo baahan yahay in Wasaarada Cadaalada, Diinta iyo Awqaafta, Wasaarada Shaqaalaha iyo Wasaarada Waxbarashadu ay saxeexaan heshiisyada in ay iska kaashadaan sahlida borogaraamyo waxbarasho iyo koorsooyin farsamo oo laga dhex hirgalin karo xabsiyada.

Dayactirka iyo Dibu-dhiska Xabsiga Dhexe ee Muqdisho

Sida kasoo if-baxday qiimentan lagu sameeyay xabsiga Dhexe ee Muqdisho, waxyaabaha ugu muhiimsan ee xabsigu u baahan yahay waxa kamid ah in xabsiga laga dhigo meel amaan ah, xaquuqda aadamaha

lagu dhowro, isla markaana ku haboon xaaladaha dadka lagu soo xiro/xayiro xabsiga. Tusaale ahaan in uu lahaado farniijarka iyo qalabka kale ee muhiimka ah. Gaar ahaan waxa aad loogu baahan yahay in maxaabiista loo kala sooco sida waafaqsan sharciyada lagu soo xiray maxbuusyada.

Daryeelka Caafimaadka iyo Ka-hortaga Cudurada

Xuquuqda caafimaadka ee maxaabiistu waa mid wali taagan. Hadaba maxaabiistu waxay xaquuq u leeyihin in ay helaan daryeel caafimaad oo u dhigma heerka daryeelka caafimaad ee dadweynaha kale helaan. Markaasi waxa waajib lama-huraan ah in xabsigu yeesho daryeel caafimaad iyo karaanka ka-hortaga cudurada. Gaar ahaan baahida ugu culus ee arrimahan waxa ka mid ah in maxaabiistu hesho biyo nadiif ah iyo aaladaha nadaafada. Wasaarada Cadaada Diinta iyo Awqaafta iyo Wasaarada Caafimaadku waa in ay kala saxeexdaan heshiis is-kaashi oo ku aadan in ay kobciyaan adeegyada daryeelka caafimaad ee xabsiga.

Horumarinta Xaaladaha Dumarka iyo Caruurta xabsiga ku jira

Xaaladaha dumarka iyo caruurta ee xabsiga ku jirta waa mid aad u qalafsan oo u baahan in ay si gaar ah u fiiriyaan hay'adaha qaranka ee ay khusayso iyo weliba beesha caalamku. Dumarka iyo caruurta waxa ay u nugul yihiin in loo soo xiro arrimo aan sharci u aqoonsanayn in ay dambi yihiin, balse bulshadu u aragto xad-gudubyo dhaqanka ku xadgudbaya. Sidaa awadeed waxa loo baahan yahay in xukunadaa cadaalad darada ahla iska wacyi-galiyo oo karaan korodhsi looga hortago.

a) Caruurta:

Waxa aad loogu baahan yahay in la sameeyo xarumo gaar ah oo lagu hayo caruurta lagu soo xiro ama xakameeyo dambiyo ay galeen. Waana in

la ogsoonaadaa in xiritaanka caruurta yahay talaabada ciqaabeed ee ugu dambaysa, lana siiyo ilmaha xabsiga ugu mudada gaaban ee ku haboon. Waana in wakhtiyada kale iyo ikhtiyaarka dadkaasi la tixgaliyo. Sidoo kale waxa jira baahi muhiim ah oo loo qabo kobcinta waxbarashada iyo weliba borogaraamada loogu talo-galay in lagu hayo caruurta dambiyada soo gala. Tani macnaheedu waxa weeyi in la helo meelo kale oo lagu xayiro caruurta, kuwaasi oo laga yaabo in aanay mudnayn culayska damigaasi. In kasta oo tirada maxaabiista caruurta ah ee xabsiyada ku jirtaa aanay hada aad u badnayn. Balse ilaa hada ma jiraan xog lagu kalsoonaan karo oo tilmaamaysa tirada caruurta ah ee ku jirta xabsigan ama meelaha kale ee lagu xayiro dadka. Sidaa awadeed waa in muhiimada la siiyaa sidii loo dhisi lahaa karaanka iyo xirfadaha Maamulka Dawladda iyo Hay'adaha kale ee danta ka leh, si ay usoo ururiyaan xogo lagu kalsoonaan karo. Waxana loo baahan yahay in la hirgaliyo adeegyo ku filan oo loogu talo-galay kobcinta waxbarashada ee caruurta iyo weliba helitaanka nashadaad ku haboon baahidooda. Waxa kale oo xusay mudan, in ay jiraan baahida loo qabo waxqabadyo degdeg ah oo lagu hormarinayo walaacyada iyo baahiyaha ugu muhiimsan, tusaale ahaan: la hirgaliyo tabobaro aasaasi ah oo lagu kobcinayo aqoonta xubnaha shaqaalaha ah ee haykalka cadaalada, laguna kordhinayo wacyiga barashada sharciga wadanka iyo kani beesha caalamka ee ku aadan caruurta la horkeeno sharciga; xoojinta ururada madaniga ah si ay caruurta xabsiyada ku jirta ugu fududeeyaal helitaanka taageero saykoolaji ah, caqli-celin (counselling) iyo weliba kaalmo sharciyeed oo loogu talo-galay caruurta ku jirta xabsiyada.

Asbaabahaasi kor ku xusan oo dhan, waxa ugu sii muhiimsan in la aaburo hanaanka adeegyada talo-bixinta maxaabiista, gaar ahaan kuwa la shaqeeya caruurta, oo kala taliya baajinta dambiyada: hanaanka caruurta

fal-dambiyeedka gasha looga weecin karo xabsiyada, tusaale ahaan cadaalada magdhow siinta dhibanayaasha oo ah hanaan si dhakhso ah loogu soo af-jari karo, isla markaana baajin karta hanti badan oo ku baxda kaysaska caruurta oo badanaa ah kuwo si sahlan loo xalin karo.

Ugu dambayntii, sharciga caruurta ee wadanku weli waa qabyo, taasi oo lama huraan ka dhigaysa in dibu-qaabeyn baahsan lagu sameeyo, lana tixgaliyo sidii loo samayn lahaa sharciyo iyo maamulo sharciyeed oo casri ah oo u heelan baahida caruurta lala tiigsado sharciga, sharciyadaasi oo waliba loo baahan yahay in ay noqdaan kuwo la jaan-qaadaya ugu yaraan heer-beegyada ugu hooseeya ee ay waajibinayaan sharciyada iyo tusmooyinka caalamiga ah ee khuseeya xaquuqda caruurta.

b) Dumarka:

Xabsiga Dhexe ee Muqdisho qaybtiisa ay ku jiraan maxaabiista dumarka ahi waxa ay u baahan tahay in si degdeg ah loo qalaabeeyo/furniijar loo dhigo. Dumarka maxaabiista ahi waxa kale oo ay aad ugu u baahan yihiin in loo sameeyo borogaraamyo loogu talo galay kor u qaadida waxbarashada iyo koorsooyinka farsamada oo ka turjumaya baahida dumarka. Ciidamada Asluubtu waxa kale oo ku waajib ah in ay qaadaan talaabooyinka lama huraanka ah ee lagu tixgalinayo baahiyaha hooyooyinka wata caruur dhalaan ah marka xabsiga la keeno. Waana in tixgalinta la siiyo hooyooyinkaasi sida sharciga waafaqsan iyo waliba in ay helaan hanaanka iyo adeegyada waajibka ah ee sharcigu u ogolaaday, tusalaale ahaan hawl-wadeeno aqoon u leh, sida talo-bixiyayaasha maxaabiista ama adeege bulsho kuwaasi oo usoo diyaarin kara maxkamada warbixino ku saabsan caruurta/dhalaanka hooyada si markaasi ay maxkamadau go'aan cadaali ah uga gaari karto.

Maxaabiista in loo Sahlo La-qabsiga Bulshada

Dawlada waxa kale oo looga baahan yahay in ay muhiimada saarto abuurida mashaariic loogu talo-galay sahalka maxaabiista in ay bulshada dib ula qabsadeen oo dhex gali karaan marka ay soo dhamaystaan xabsigooda. Tani waa in uu qeyb ka noqdo borogaraamka lagu hirgalinayo hanaanka sii-deynta maxbuuska ee qiimaynta, laguna xirayo siideynta maxbuuska sharuudo, oo hadii maxbuusku kasoo bixi waayo sharuudahaas xabsiga dib loogu soo celin karo. Hanaankan waa lagu xusay sharciga, balse lama ogsoona in la fuliyo?

La-taageero Hanaan iyo Qaabab kale oo Ciqabeed oo ka Duwan Xabsiga

Waa in, si degdeg ah, loo fidiyo taagero farsamo oo ku saabsan sidii loo samayn lahaa siyaasad qarameed ku saabsan go'aamada iyo xukunada dambiyada ciqaabta (iyo weliba tusmooyinka la xiriira). Waxa kale oo loo baahan yahay in la aburo hanaanka iyo karaanka in damiilayaasha lagu kormeeri karo iyaga oo bulshada dhex-jooga, tani waxa lagu bilaabi karaa tijaabo kooban oo lagu cabiri karo in habkanu shaqaynayo iyo in kale. Tani ayaana horseedi karta in si fiican loo maamuli karo dambiilayaasha ay maxkamadu ku xukunto in ay sameeyaan shaqo-bulsho (community services). Hanaanka noocan ahi waxa kale oo uu cadaalada wadanka ee dambiyada u saamaxi karaa in maxaabiista xabsigooda loo maarayn karo siyaabo kale. Tusaale ahaan in maxbuuska hore xabsiga looga sii daayo balse sharuud lagu xiro (conditional releases), xabsi-baajin (suspended sentences) ama probation-ka. Ugu dambayntii kormeerida maxaabiista marka ay xabsiga kasoo baxaan. Habkani waxa uu kaalmayn karaa hanaanka iska cafinta maxaabiista oo dadweynahu had iyo jeer kalsooni doro ka muujiyo.

Abuurida Hanaan lagu Kormeero Xabsiyada iyo Xarumaha Xayiraada

Wasaarada Cadaalada, Diinta iyo Awqaafta, Wasaaradaha Arrimaha Gudaha iyo Qareenka Guud waa in ay iska kaashadaan abuurida gudi wasaaradeed oo kormeer guud ku samayn karta si ay u hubiyaan in xarumaha xabsiyadu u hawl-galaan sida waafaqsan sharciga. Waana in gudidanu masuul ka ahaataa: dibu eegida in maxaabiista xukun sugayaasha ah aanay dhaafin mudada uu cayimay hanaanka sharciyada dambiyada; hubiyo in maxaabiistu helaan gudida ka talisa sii-deynta, isla markaana maxaabiista la sii daayo isla marka uu ka dhamaado mudadii lagu xukumay. Waxana la rumaysan yahay hadii hanaankan la sameeyo in ay yaraan doonto maxaabiista sida sharci darada ah isaga sii xiran xabsiyada.

Waxa Meesha ka maqan Gudi Qarameed oo Qaabilsan Xaquuqada Aadamiga (National Human Rights Commission), sidaa awgeed waxa degdeg loogu baahan yahay in la xoojiyo doorka xafiiska Qareenka Guud (Attorney General's Office)³⁶ si loo kormeero xaaladaha xabsiyada ee maxaabiista. Waxa kale oo lama huraan ah in la abuurto hanaan qaraameed hufan oo madaxbanaan oo awood u leh in uu kormeero dhamaan xarumaha lagu hayo dadka xoriyadooda laga xayiro. Intaasi ka bacdi waxa loo baahan yahay in laga taageero Wasaarada Cadaalada, Diinta iyo Awqaafta, iyo weliba Ciidamada Asluubta in ay sii ambo-qaadaan karaan talooyinka kasoo baxa kormeerada lagu sameeyo iyo in ay fulin karaan talo-bixinta loo soo jeediyo.

³⁶ Article 14, Part III, of the 1971 Prison Law.

