Human Rights in Puntland And Jubaland

STATUS STUDY ON CHILD LABOUR PREVENTION, JUVENILE JUSTICE, CHILD SOLDIER REHABILITATION AND THE STATE OF HUMAN RIGHTS IN PUNTLAND AND JUBALAND
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Diakonia was established in 1966 under the name of Swedish Free Church Aid. Ever since, its focus has been on people exposed to injustice and their opportunities to change their situation. In 1984 the name of the organization was changed to Diakonia. The word "diakonia" is Greek, meaning care and service.
1. Introduction

This thematic study is part of a baseline study commissioned by Diakonia Sweden Somalia, and the aim is to inform the baseline by making an assessment of the state of human rights in Puntland and Jubaland, especially in relation to child rights. The study will touch upon the overall state of human rights in Puntland and Jubaland but with a focus on child labour prevention, child soldier rehabilitation and juvenile justice. The aim of the study is to inform the Diakonia Rights Programme in terms of identifying the assumptions and preconditions necessary to achieve the following human rights improvements:

1. Increased public debate and recognition of human rights violations;
2. Increased respect for the rights of the child;
3. Strengthened respect for human rights of prisoners and detained persons;
4. Improved human rights defense structures;
5. Increased possibilities for victims of human rights violations to access and get justice;
6. Improvement and implementation of human rights legislation.

The analysis was carried out in August and September 2014.

2. Methodology

The study is based on a desk review and quantitative as well as qualitative data collection in Jubaland, Puntland and Nairobi. The methodology takes a perception-based approach in as much as it explores people’s assessments with regard to the political and socio-economic aspects of their everyday lives.

Key informant interviews were held with service providers from the UN, INGOs and local NGOs in Garowe and Nairobi. The findings in this report are also supported with data collected by two field teams conducting quantitative and qualitative data collection in districts in Puntland and Jubaland. The teams collected 300 questionnaires in Jubaland and 500 in Puntland, as well as facilitating six focus group discussions for each region - two groups for women, elders (men) and youth one in each rural and urban areas.

Lastly, 12 key informant interviews in both Jubaland and Puntland were conducted by the teams to capture the views of residents and key stakeholders in both rural and urban areas.

2.1 Limitations

LACK OF DATA: There is very limited data available on Jubaland. Most of the studies and reports produced are generally about the south-central Somalia region, and only a handful mention Jubaland as a region, which has to do with the fact that Jubaland was only formed in late 2013. However, the cultural differences in Somalia are limited, as language and religion are the same across the state, making it possible to project information from one region to another, especially across south-central Somalia.
When doing this, however, it is important to be aware of the volatile security situation on the ground and the changing security dynamics. In addition, Jubaland does not have a constitution or even a provisional one; instead, a charter has been drafted; whereas Puntland, announcing its independence in 1998, has a constitution and other adopted legal frameworks in place.

When addressing legal provisions, this study will therefore be based on what is stated in the draft Charter of the Interim Administration of Jubaland in conjunction with the provisions made in the Provisional Federal Constitution.

The information included in this report, is founded on the interviews conducted in Garowe and Nairobi with key service providers and human rights experts.

Based on these and resources available online, the study will seek to make recommendations for Diakonia Sweden in terms of programming...
3. The State of Human Rights in Somalia

3.1 The Federal Republic of Somalia

The Human Rights situation in Somalia continues to be challenging despite some positive political, economic and security developments since the new Federal administration came to power in August 2012, and the adoption of the provisional federal constitution. The provisional constitution is founded on Sharia law, and it states that human rights according to international standards must be applied.

With the collapse of the Somaliland state in 1991 and the civil war, Somalia has experienced substantial human rights challenges for the past two decades. The absence of governance and rule of law institutions in parts of the country, combined with natural disasters and famine, and compounded by conflict, have affected the respect for human dignity and caused massive human rights violations.

Extra-judicial killings and the killings of civilians; restrictions on freedom of the press; targeted assassinations of journalists; discrimination and violence against minority groups, not least internally displaced persons (IDPs), women and children, including rape and female genital mutilation/cutting (FGM/C) – these are some of the most widespread and common human rights abuses in Somalia.

The human rights situation differs within Somalia, according to the degree of stability in the different regions, as well as the concrete political steps taken to create frameworks for addressing human rights and impunity issues.

A major factor contributing to the fragmentation of Somalia, as well as to the limitations of the application of a rights-based approach to development in the country by the authorities, is the clan dominated informal governance structures. At the regional level, clans play a key role in deciding the leadership.

Examples include the initial postponement (or derailing) of the democratic presidential elections in Puntland, the Jubaland state formation, as well as the defacto clan rule in most non-al-Shabab regions of south-central Somalia. In these areas the rule is defined through clan negotiations relative to the financial and military leverage of these.

Several observers view the clan-based system as an impediment to democratic progress.2 This system is less receptive to the basic understanding of what is entailed in the concept of duty bearers, responsible for welfare of women and men under their authority – and there is limited room for rights holders to demand the same.3

However, in south-central Somalia the Federal Government is increasingly working on human rights issues, including the adoption and implementation of a Human Rights Road Map,4 which will lay the foundation for improving the protection and promotion of human rights in Somalia.

The Roadmap defines the Government’s responsibilities and sets goals to be achieved in the short run, and the process has been widely supported by the UN. The 17 rights contained there – with each right having its own action plan – have not yet been presented to the different regions/states or civil society organizations, and it is questionable how much ownership there is of the plan beyond Mogadishu.4

In addition, human rights are, in principle, treated as a crosscutting issue in the New Deal Somalia Compact, which includes the development of an independent justice sector and legal framework addressing human rights violations. However, the document does not, as such, provide a rights-based approach, and human rights are not mainstreamed in its results framework. The implementation of these political initiatives will display FGoS’ commitment to the issue.

So far, the limited inclusion of the Somali civil society and, consequently, the questionable ownership of the process, are posing a risk to the sustainability of the human rights initiatives.

The latest report on the human rights situation in Somalia to the Human Rights Council5 compliments the Federal Government for its efforts to introduce key human rights legislation in parliament – including the establishment of a Human Rights Commission, a Judicial Service Commission, a Constitutional Court, as well as adopting and initiating the implementation of the National Stabilization Plan.

However, there is still a long way to go, and the report also recommends that that the FGoS ratifies key human rights treaties such as the Convention of the Rights of the Child, and it is recommended that it should establish a national institution in line with the principles related to the promotion and protection of human rights.6

WOMEN/GIRLS

Somalia ranks second to Afghanistan as the worst country worldwide for women.7 Women hold 13.8% of the seats in Parliament in Somalia and women and children comprise 70 to 80% of all refugees and IDPs. In the parliament of Puntland only 3% of members are women and only 10.6% of positions in the current administration are held by women.8 The provisional federal constitution describes female circumcision as cruel and degrading, equates it with torture, and prohibits the circumcision of girls. In Puntland a law has been passed making FGM illegal. Nevertheless, FGM/C was widespread throughout the country. As many as 98% of women and girls had undergone FGM/C, and the majority were subjected to infibulation, the most severe form of FGM/C.9 Somalia is yet to ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

3.2 The state government of Jubaland

South-central Somalia is divided into separate factions. Most prominently has been the struggle of the region of Juba in southern Somalia, which at first unilaterally following a joint clan decision, declared its independence. After denouncing the move, the FGoS later moved to negotiate a settlement resulting in a temporary declaration of autonomy of the Juba region within the state of Somalia.10 On 15 May, Ahmed Madobe, leader of the Ras Kamboni militia, was named president of the self-declared state of Jubaland in the southern region bordering Kenya. (Formerly aligned with the Islamic Courts Union and ousted by Ethiopia in 2006, Madobe fought alongside Kenya against al-Shabab during 2012.)11

Jubaland covers a combined area of 87,000 sq km and has a total population of around 1.3 million. This includes numerous clans, such as the

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1. UNSC Report, June 2013.
3. The Roadmap for the period 2013 to 2015 was formally endorsed on 27 August at a special session of the Cabinet of Ministers convened by Prime Minister Abdi Farah Shirdon, who also announced the creation of a Ministry for Human Rights.
6. Child prostitution is illegal in all regions. There is no formal statutory rape law or minimum age for consensual sex. Child pornography is not expressly prohibited. Sexual exploitation of children reportedly occurred.
11. Somalia Newsroom: Jubaland reborn; A look at Jubaland and Somalia post Addis Agreement.
Ogaden-Darod, Maheer-Darod, Sheekhaal, Coormale, Biimnaal, Gaaljecel, Raxanweyn, Dir, Gawaaweyn, Murile, Bejuni Boni and various Bantu groups.¹²

The poor state of human rights in Jubaland must be seen in conjunction with the fragile security situation in the region as well as the fact that it is a young state with only a draft charter as a constitution. Until 30 August 2014, the former opposition leader, Col. Barre Hirale, disputed the legitimacy of the State of Jubaland. Hirale and his supporters, after discussions with respected traditional clan elders and representatives from Somali Federal Government, agreed to peacefully resolve their differences to bring an end to nearly one year of in fighting in Jubaland.

The draft charter of Jubaland mentions almost all individual human rights; however, due to the insecurity and the immaturity of the administration, a lot remains to be seen in terms of implementation of the charter. In addition, al-Shabab still controls a significant part of the Jubaland state.

³.³ The Puntland Regional Government

Formally, the Government of Puntland recognises its position as a state within the greater state of Somalia. However, Puntland has developed an independent constitution, flag, and legislative, executive and judicial institutions as well. Puntland is still to implement its first democratic elections. Last year saw the irregular postponement of the presidential election and the replacement of this with the parliamentary selection of the same.

This resulted in the surprising, yet peaceful, transfer of power from Mohamoud Farole to Abdiweli Mohamed Ali in January 2014. The process illustrates the status of Puntland in transition to becoming a unitary democratic state. The peaceful hand-over of power shows acceptance of the current systems by leading clans; however, the postponement of elections are evidence of still high levels of fragility.

In Puntland the ratification of the Puntland constitution on 20 April 2012, which includes a chapter on human rights, represents a positive political step. The Government of Puntland is, however, still to appoint a ‘Human Rights Defender’ as stated in the constitution.

³.⁴ Sharia versus International Law

As mentioned, the Federal Constitution of Somalia, the Jubaland Charter as well as the Puntland Constitution, are all based on Sharia law. As stated in the Federal Constitution: “After the Shari’a, the constitution of the Federal republic of Somalia is the supreme law of the land” (Federal Constitution, 2012: 1).

However, the constitutions also state that it is based on human rights and international legal frameworks: “The Constitution of the Federal Republic of Somalia promotes human rights, the rule of law, general standards of international law” (Federal constitution, 2012:1).

Any international organization implementing a rights programme in Somalia should be aware of the discussion concerning whether a society can claim to have rule of law based on human rights when it is governed by the Sharia law. The below is an attempt to bring forward the arguments on each side in order for Diakonia to be fully aware of the sensitivity of promoting international – some would say – western legal frameworks in an Islamic context with a long customary law practice based on Islamic teachings.

According to one line of thought Sharia and international human rights law are not compatible. The main argument is that international law is centered on the individual, who is seen as primarily responsible for errant behavior, whereas Sharia law ascribes the primary legal responsibilities to larger entities, such as family, clan or tribe. The means that the objective of the traditional system in Somalia is not to punish the perpetrator, as much as it is to maintain the relationships between the clans.

In addition, according to this line of thought, the other major differences are that Sharia punishes certain crimes by the death penalty, and in Sharia a husband is in charge of his wife – thus circumventing the international human rights principle of gender equality.

The other school of thought looks at Sharia as being compatible with international law, with minorities enjoying equal rights of worship, employment, doing business, and practising their religion the way they understand it. Islam is compatible with democracy, as the political system should function on the basis of mutual consultation of the participants.¹³

The inherent flexibility of Sharia encompassing different legal tools according to these scholars creates room for interpretation and adaption to changes of context and circumstance. Hence, accordingly, it is argued that Sharia law and international human rights conventions can meet.¹⁴

It is not the purpose of this paper to take sides in the discussion. However, since customary law based on Sharia has been practised for decades and has functioned as the legal framework, even during the state collapse in Somalia, it would seem a waste not to take advantage of these existing local structures. The fact that they may not correspond to Western concepts of justice, or fully comply with international standards, is another reason why we should engage them, if we are seeking to guarantee a quality of justice.¹⁵

¹² http://www.irinnews.org/report/97860/briefing-somalia-federalism-and-jubal-
¹³ Humans Rights Law and Islamic Shari’ah: Areas of Compatibility and Conflict, by Dr. Khaled Zaheer.
4. Child labour in Somalia

Somalia has been described as one of the most challenging countries to grow up in. Only 29% of children in Somalia (only 22% in south-central Somalia) attend primary school, and only 7% of the secondary school-age population attend secondary school. The poverty rate is amongst the highest in the world, at 60% of urban households and over 95% of rural households. This is one of the main reasons why children are sent out to work instead of going to school.

According to the Somalia Human Development Report 2012, other major reasons for not attending school are 'inability to afford it' at 36%, 'household work' at 22% and 'not relevant for getting jobs' at 17%. The reasons varied by gender, with no regional differences. For instance, about 33% of females compared to 21% of males had to work at home instead of attending school. Youth perceptions of the quality of education diverged by the levels of education and region but, for the majority, the quality of education offered at all levels was either ‘very poor’ or ‘poor’. There is no question that child labour is widespread in Somalia; however, the numbers differ depending on regions and agencies. In Somalia an ILO survey in 2012 established that 49% of all children below 15 were working, of which 45% were boys and 54% were girls. Looking at the aggregated number for Somalia, the Somalia Human Development Index 2012 has slightly lower numbers. See the table below:

Table 1: Statistics on Working Children and Education in Somalia

<table>
<thead>
<tr>
<th>Children</th>
<th>Age</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working</td>
<td>5 – 14 years</td>
<td>39.8 (1,012,863)</td>
</tr>
<tr>
<td>Attending School</td>
<td>5 – 14 years</td>
<td>48.9</td>
</tr>
<tr>
<td>Combining Work and School</td>
<td>7 – 14 years</td>
<td>20.2</td>
</tr>
<tr>
<td>Literacy rate</td>
<td>6 - 13</td>
<td>42</td>
</tr>
</tbody>
</table>


Looking at the number of working children in Puntland and Juba, according to a Diakonia baseline survey, the number is significantly higher in Puntland at 45.7%, whereas in Juba it is 32%.

According to the 2013 Country Report on Human Rights Practices in Somalia, especially children from minority clans are reportedly used as porters in transporting the mild narcotic khat (or ‘miraa’); in farming, animal herding, and crushing stones; and in the construction industry. IDPs are another group where child labour is widely practised, as children (especially girls) walk from the camps in the morning to work at host community families or as shoe shiners and car washers in the town (especially boys). The use of child soldiers is a problem that will be dealt with separately in chapter 5.

4.1 Girls

Many Somali girls are given away in marriage at an early age, after which they must start producing children. It is seen as normal for a Somali elder to marry a teenage girl. The main reason for this practice is that the girl’s virginity and the bride price go hand in hand. Young girls are less likely to have had sexual contact and thus are believed to be virgins upon marriage; this condition raises the family status as well as the dowry paid by the husband. The provisional federal constitution does not specify a minimum legal age for marriage. It notes no marriage shall be legal without the free consent of both the man and the woman. Early marriages commonly occurs, and 45% of women between the ages of 20 and 24 were married by age 18, and 8 percent were married by age 15. In rural areas parents often compel daughters as young as 12 to marry. In areas under its control, al-Shabab arranges compulsory marriages between their soldiers and young girls, and they used the lure of marriage as a recruitment tool. There were no known efforts by the government or regional authorities to prevent forced and early marriage.

42 The federal legal framework on child labour

The legal framework for child labour in Somalia dates back to the Somali pre-1991 Labour Code, which prohibits child labour; provides a legal minimum age of 15 for most employment; prescribes different minimum ages for certain hazardous activities, and prohibits those under 18 from night work in the industrial, commercial, and agricultural sector – apart from such work that engages family members only.

The Provisional Federal Constitution from 2012 states in Article 29 that: ‘No child may perform work or provide services that are not suitable for the child’s age or create a risk to the child’s health or development in any way’. The Provisional Federal Constitution defines a child as any person less than 18 years old.

The Federal Ministries of Labour, and Social Affairs, Gender, and Family Affairs are responsible for enforcing child labour laws. In practical terms the ministries are yet to enforce these laws. There has been no specific government action to prevent child labour or remove children from such labour.

However, on 20 March 2014, the FGoS ratified ‘The Worst Forms of Child Labour Convention 1999’, making the United States and South Sudan the only two states in the world which have not ratified it.

43 Puntland

1. Child labour in general

There are not aggregated data available on the number of children under 15 working in Puntland. ILO Somalia is currently conducting a labour force survey, which will also include the child labour issue, but it will not be finished until the end of the year. However, ILO has included a rapid child labour assessment in Somaliland, interviewing 87 working children in three towns, and the Youth Employment and Gender Officer at ILO Somalia expects that the numbers for Puntland would look slightly similar to Somaliland. This means that half the children (defined in the Puntland constitution as being under 15 years old) are involved in child labour in Puntland.

According to ILO, the largest proportions of working children are providing cleaning services, including shoe shining, car washing and general cleaning of pavements. Their findings indicate that cleaning services, selling in hotels and shops, and domestic work, account for nearly 80% of all work done by children. Most girls (94% ac-
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The view is positive about employing children, not least as children are better at following instructions and obeying orders.

However, there was consensus amongst the people asked in the ILO survey, as well as the current Diakonia survey, that children should only do light and unskilled work, and that it is problematic that child labour often means that the child will not go to school and get an education. 80% of the children that are working are not attending school and only 20% manage both work and school.

Income is the main benefit from working according to the children in the survey – half of the children live with their parents, while 27% live with relatives. Few are living alone (9.2%) and 7% are living on the streets.

According to the Human Rights Unit in UN-SOM, Garowe, the government has a variety of challenges concerning human rights, and the capacity of the Ministry of Women and Family Affairs has a very limited capacity as well as limited resources. In addition, the Ministry is more concerned with the rights of women, which has also been a mainstream issue with donors for a long period.

The Ministry of Labour, which is the other authority who should be concerned about child labour issues, focus on the creation of jobs especially for the youth, as the unemployment rate is one of highest in the world at 67%.23

In the strategic document, Puntland Priorities 2014 – 2016, a set of key priorities for the next three years has been outlined, with justice as one of the five pillars under which developing legislation to outlaw exploitative child labour is a key priority for the Ministry of Justice, Religious Affairs and Rehabilitation.24

### 3. Cultural norms related to child labour

According to ILO, approximately every second child works in Puntland, and it does not seem to be a problem according to the cultural norms.23

Almost half are working for relatives or for their parents, and the survey found strong arguments defending child labour such as: ‘Children are under the power of parents, if they do not help us who should?’

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According to the Human Rights Unit in Garowe, many parents do not believe that attending school necessarily will improve their children’s chances of employment, and this view can be supplemented with the finding in the ILO survey, which indicates that more than 50% of the parents of working children have never attended school.

It emerges that the education level of parents could be a strong indicator for whether they support or oppose child labour. Certainly, a strong justification given for child labour in the community is poor social and economic opportunities.

In the Diakonia survey the importance of education was also examined, and it was one of the top violations of children rights in Puntland (15%) when a child does not have access to schools.

When asked why children are sent to work, very few (7%) answered that schools is not important.

### 4. Child-headed households

This is not common in Puntland, except for some IDP settlements, according to the Puntland Centre for Human Rights and Democracy.

#### 4.4 Jubaland

1. Statutory provisions

According to the Jubaland Interim Charter of March 2013, all forms of child labour are prohibited. This means that the Jubaland administration has a most condemning “constitution” on child labour compared to Puntland, where child labour is not banned but only hard and dangerous labour is mentioned.

The same applies for the Federal constitution.

The Federal Government ratified the Worst Forms of Child Labour Convention which bans labour that jeopardizes the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out – known as “hazardous work,” such as being recruited
as child soldiers, child prostitution, etc. Somalia is still to ratify the Convention on the Rights of the Child.

2. Cultural norms
The cultural norms around child labour in Jubaland are very similar to those of Puntland, except that more respondents in Jubaland perceived a child to be below 18 rather than 15 as in Puntland.

3. Child-headed households
The issue of child headed households is prominent within IDP settlements, especially in the Lower Shabelle along the Afgoye corridor. There are no updated numbers, as access has been a challenge, but presumably in areas formerly controlled by al-Shabab the issue could be of concern as well.

5. Child Soldiers
Despite some successes in peace building in Somalia, ‘non-state armed actors’ are prevalent in all regions of Somali. They include criminal gangs, freelance militias, political/radical armed groups, clan militias and private/market/neighborhood security groups.

Given the current lack of in-depth research, little is known about what drives these groups or how they operate. What is clear is that children are being systematically recruited and used for military and related purposes by all major combatant groups. They are mostly recruited from schools or madrasas and from camps for IDPs in Somalia and refugees from neighboring countries.

There are reports of girls being recruited by anti-government elements to ‘marry’ fighters, provide logistical support and collect intelligence. The majority of children associated with armed forces or armed groups are 14 to 18 years old, although children as young as 9 are being recruited by anti-government elements. The most dominant group in enlisting youth is al-Shabab, which uses intimidation and forced recruitment, along with economic incentives and jihadist indoctrination.

The total number of children and youth being used in Somalia’s conflicts is not known but, according to the UN Monitoring Group report from July 2013, 1,990 cases of child recruitment by armed group were documented in 2012 compared to 948 in 2011. The recruitment and use of children by armed forces or armed groups is one of six egregious child rights violations falling within the scope of UN Security Council Resolution 1612 (2005). Recruitment of children under the age 15 for direct participation in hostilities is a war crime.

5.1 Puntland
In Puntland, youth engaged in criminal activities are reported to be mainly pirates and illicit drug or charcoal traders, according to the UNDP Human Development Report 2012. Speaking to UNICEF and the Human Rights Unit in Garowe, the problem of child soldiers in Puntland is not prominent. The Serendi Rehabilitation Centre has also very limited experience with rehabilitating former child soldiers in Puntland. The survey indicated that 11% of the people asked saw working as a child soldier as one of the main violations of children’s rights. As al-Shabab’s presence is relatively limited in Puntland, so too is their recruitment of child soldiers in the region.

However, with the movement of al-Shabab northwards, their practice of recruiting children into their ranks is also spreading into Puntland, particularly in Galgadud in 2013.

5.2 Jubaland
In south-central Somalia, the main criminal gangs are pirates, freelance militia, and armed clan militia, while the main non-state armed groups consist of al-Shabab, Ahlu Suna Wal-Jama’a (Raa-s kambooni), Sool, Sanaag and Ceyn, and groups affiliated with the business community or led by former warlords, TFG private militia, Hishbul Islam (outside of al-Shabab control), international security companies, regional armed militias, and private armed security. Clans and families also mobilize youth—as a defence against hostile clans.

Children recruited by armed gangs are a major problem, especially in south-central Somalia and the Jubaland State, according to UNICEF. The majority of children being enrolled in armed groups are from this region, as many areas are still controlled by al-Shabab. However, the children being abducted or lured into joining militias are not only forced by al-Shabab. The numbers from the Security Council briefings indicate that only 53% can be associated with al-Shabab; while close to one third are recruited by the Somalia National Army (SNA).

This is happening despite the signing of an action plan to end the recruitment of children in armed conflict. AMISOM has also been accused of recruiting child soldiers as well as clan militias, including Madobe’s Ras Kamboni Brigade. From the Diakonia baseline survey, it is seen that only 6% of the 300 respondents perceive the recruitment of child soldiers as a main violation of children’s rights – a surprising finding. This could imply that children are exposed to so many dangers such as deprivation of food, forced marriages, sexual abuse, etc. in Jubaland that becoming a child soldier is just one violation on the list. Another explanation could be that the team could not, due to security reasons, travel into al-Shabab controlled areas where the risk of recruitment is much higher.

1. Reintegration – attitudes and norms of the community
The reintegration of former child soldiers into their home community is, according to both the Serendi Project and UNICEF, a question of having a member of the immediate or extended family vouching for the child in terms of guaranteeing its security and the security of the community. It does not matter whether the child has been involved with al-Shabab or another armed group.

As a project coordinator for the Serendi Rehabilitation Centre put it: ‘The community will look at the former child soldiers as children, and
hence they cannot be held accountable for their actions. It is rare that a community does not wish to receive a former child soldier; however, there is little agreement about what is required in the reintegration process. The UNICEF model is a matter of getting the child home as quickly as possible – first moving the child to a centre close to the community. The model includes school enrollment and vocational training, as well as awareness campaigns.

The Serendi Project is using a slightly different method where a family member or a clan representative, someone who will ensure the child’s safety, is contacted, and a meeting is arranged between the child, staff from the rehabilitation centre, and the vouching adult. This time taken for the trust building process varies. Both UNICEF (in cooperation with ILO) and Serendi provide the children with vocational skills and a start-up kit before they return to their communities. In rare cases it is not deemed safe that the child return to the village and, instead, an extended family member in a different location accepts the child.

2. Reintegration capacity
According to the Diakonia survey, the family is also perceived as the entity most willing to accept the child back into the community. This is especially the case where the local authorities do not receive the children willingly. Some respondents stated that the former child soldiers are arrested and tortured by the police upon their return. At present, there is no formal reintegration system anywhere in Somalia.

3. Current interventions
The rehabilitation of former child soldiers in Somalia is a subject that divides donors, UN and other stakeholders working in Somalia. Hence it is difficult to get precise data on the matter. Approximately three years ago the UN (UNICEF, UNDP, UNPOS, IOM, ILO and AMISOM) began working on a comprehensive rehabilitation plan for ex-combatants in Somalia, on how to treat and reintegrate them once they have surrendered or have been captured by the Somalia National Army or AMISOM.

There is still no formal UN DDR programme in Somalia, but UNICEF has been implementing community-based programmes for former child soldiers since 2011, providing child friendly spaces with access to vocational training, schools and psycho-social support by local social workers close the child’s home area. For UNICEF it is important that the child does not stay in camps but is quickly back living with his family.

The Serendi Rehabilitation Centre, originally funded by the Norwegian Government set up a centre in Mogadishu in 2010/2011 in close cooperation with the Federal Government and the National Intelligence and Security Agency (NISA), with an objective to start the process of rehabilitation of former combatants. According to the Serendi Project, they have rehabilitated more than 1200 ex-combatants, amongst them some children. This has been done in close dialogue with NISA and the changing interior ministers for the Federal Government in Mogadishu – to the complete satisfaction of the Somalia authorities. In 2012 Danida and the Spanish Government committed funds to the project, and in 2014 the British Government will take over the funding of the project.

UN agencies disapprove of the screening process done by NISA, so there is no cooperation or coordination between the Serendi Child Centre in Mogadishu and Beletweyne and the community-based programmes that are run by UNICEF targeting former child soldiers.

A report from the Secretary-General to the Security Council on Somalia, dated July 2013, states that 1,100 children formerly associated with armed groups (863 boys and 237 girls) benefited from reintegration programmes.

6. Juvenile justice
6.1 The justice system in Somalia
In all regions in Somalia Sharia is considered to be ‘the supreme law of the land’, and the recognition of the international human rights treaties is not fully there. Three systems of law coexist in Somalia: secular, Sharia and customary (xeer). Xeer and Sharia laws are particularly predominant in rural areas, where access to the formal system is extremely limited. Lack of harmonization in the way the different systems interact, address crimes and resolve litigation, prevent consistent and transparent delivery of justice. Customary law, based on negotiation among clan elders, is often only accessible for members of the dominant local clan, thus disadvantaging IDPs from minority groups in as much as they lack awareness of legal rights and the means to afford justice-related costs. Somalia’s patriarchal culture shapes the application of legal systems (especially Sharia and xeer), leading to gross gender and youth discrimination and denial of women’s rights to justice, including land and inheritance entitlements. This informal mechanisms complement existing formal ones in Somaliland and Puntland, where a modicum of state structures exists.

Justice reform has been high on the agenda since the beginning of the new administration in Mogadishu in August 2012. It is mentioned in the President’s six pillar policy and re-emphasized in the Somalia Compact where one of the state and peace building goals is to: ‘Establish independent and accountable justice institutions capable of addressing the justice needs of the people of Somalia by delivering justice for all’ This was reformulated in the National Strategic Plan for Justice Reform (2013-2015), and it addresses the need to establish, maintain and enhance justice institutions based on a sound legal framework compliant with human rights, ensuring access to justice, and quality delivery of justice for the people of Somalia, and increasing people’s confidence in the justice system.

6.2 The juvenile justice system in Somalia
Currently, the legal frameworks governing children in Somalia in conflict with the law are outdated and are not in line with the Convention on the Rights of the Child and/or any other applicable international instruments. It is also in conflict with the Federal Constitution and the regions’ charters and constitutions.

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. 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 from 1964, children under the age of 14 years are not criminally responsible.

The age of criminal responsibility therefore starts at 14, according to the Criminal Code. But in the provisional constitution the age of a child is set at 18, whereas in the Punland constitution it is set at 15. There is no mention of age in the Jubaland Charter. In addition, there are no special provisions governing the treatment of children in prison, or special regimes for children in detention.

However, Article 60 of the same Code provides that children between the age of 14 years and under the age of 18 years may be sent to prison if they have been arrested and/or

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35. The Serendi project does not like to disclose precise numbers and specifics for security reasons.
36. UN Security Council, Report of the Secretary-General on Somalia, 2 December 2013
37. UNDP 28 September 2012.
40. A Judicial Service Commission had been formed to work on the laws governing Somalia’s penal code, which was adopted in Somalia’s patriarchal culture shapes the application of legal systems, leading to gross gender and youth discrimination and denial of women’s rights to justice.
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/or the judge responsible for the case. 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 males and/or females in prison are kept together. Of particular concern is the lack of separate facilities for girls.

UNODC and UNICEF are not familiar with the number of children currently held in custody whether in prison or other detention facilities, but they do not believe that is a significant number.\(^41\)

The incarceration of juveniles at the request of families who wanted their children disciplined remains a problem. Some families have sent juveniles from al-Shabab controlled areas to prison to prevent their being forcibly recruited. A UN prison assessment found, as of July 2012, the Mogadishu Central Prison population included 950 individuals, of whom 14 were women and 39 were juveniles.\(^42\)

In the Diakonia baseline survey it was noted that there are no specific customary laws (xeer) for children and, especially in the rural areas, the lack of laws to protect a child, as well as corporal punishment in schools, were seen to be counterproductive for upholding the rights of children.\(^43\)

6.3 Puntland

The judicial structure in Puntland is decentralised to the main cities, but with very limited financial and human resources. In addition, Puntland, according to UNDP Somalia,\(^44\) has witnessed a rapid turnover in the management levels of central and local authorities, with poor consistency in public administration and limited institutional memory.

The justice sector is characterised by developing formal institutions and a limited number of legal professionals — few of whom have any formal legal qualifications.

However, UNDP is working with the Puntland State University and, in the spring of 2014, the second class of UNDP-sponsored law students graduated from the university. 45 graduates, including 13 women, completed their law degrees due to UNDP scholarships.\(^45\)

Outside of the four main towns there is limited access to the formal justice system. UNDP has set up more than five legal aid centres in the main towns; however, none of them focusing specifically on juvenile justice but more on women, IDPs, the poor and refugees.

In the Puntland Constitution, in Article 19, a child is defined as under the age of 15; thus conflicting with the criminal penal code of 1964 which has the age at 14. Since there is no legal framework for juvenile justice or other legal provisions catering for the rights of a child, the formal age limit for putting children in prisons is blurry.

According to the Human Rights Unit in Garowe the government of Puntland, i.e. the Ministry of Justice, is aware of the needs within the juvenile justice sector but they are overwhelmed and lack capacity.

However, according to the strategic government paper, ‘The Puntland Priorities 2014 – 2016,’ juvenile justice is on the agenda as priority area one with: ‘Enhancing Judiciary systems and processors by amending penal code and criminal procedures, restructuring justice institutions in Puntland.’\(^46\)

The UNSOM Human Rights Unit in Garowe regularly visits the prisons in Puntland and also monitors whether children are held in custody. They have also experienced children in prison facilities held there due to violation of duty towards the family. This implies that whoever avoids the obligation relating to the exercise of parental authority or legal guardianship, will be punished and can be thrown in prison by family members.\(^47\)

6.4 Jubaland

UNODC has no records of prisons in Jubaland and they are not aware of any visits or assessments carried out, even in Kismayo, due to security restraints. However, it is expected that Kismayo and the Gedo region contain prison facilities, but they are most likely in a very poor state due to decades of armed conflict.

45. UNDP: Strengthening the Justice Sector in Puntland, March 2014.
47. Article 430 in the Somali Penal Code.
6.5 Correctional facilities and ongoing interventions

UNODC is the only service provider in the prison infrastructure sector and they are currently operating in Mogadishu prison, Garowe, Bossaso, Hargeisa, and in Berbera. Together with UNSOM they also provide training and law reform programmes, including mentorships for correction officers.49

Their programme is mainly targeting pirates above the age of 18, but the prison facilities will host all kinds of offenders, not just children. UN-SOM has recently highlighted the need to conduct an in-depth assessment on the prisons infrastructure and its human resources’ capacity.50 UNDP are also training prison staff and providing mentors to support them such as in the newly opened Gardo prison in Puntland. However, the Puntland authorities are to provide for the running costs of the prison.

6.6 Immediate needs within the correction sector

The following needs have been identified by the UN within the correction sector:51

1. To build a separate facility for those children who are committed/remanded/detained in prison or detention facilities.
2. 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).
3. 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).
4. A basic awareness and training programme for members of the justice sector on the existing national and international norms and standards related to children in contact with the law.

The establishment of a probation system for the handling of children’s cases to avoid unnecessary recourse to the criminal justice system to resolve what are often minor infractions.

6.7 General practice compared to regional and international standards

UNODC does not build prisons with juvenile sections, as their programme targets adults. However, it is clear the conditions for children in prisons are inhumane and in breach of the conventions and, at times, the laws which the government has passed; and they are not in conformity with the minimum international standards regarding the detention of children and the treatment of children in detention.

7. Disabled children and children from minority groups

The issue of vulnerable children in Somalia is a very disturbing one; and the most vulnerable children are from the following categories:

1. Disabled children;
2. Children from minority clans;
3. Children in IDP camps;
4. Street children.

DISABLED CHILDREN: Although reliable statistics are hard to come by, at least several thousand children with physical or psychological disabilities are estimated to live in Puntland.52 It is estimated that at least 10% of children in Somaliland have some form of disability,53 which would be a good estimate for Puntland as well.

In Jubaland the number is estimated to be higher, because of the many years of conflict. There are three centres currently operational in Puntland working with disabled children. Two community-based organizations manage two of these: one visually handicapped and the other hearing impaired centres, both in Garowe. The Red Cross manages the physically handicapped centre at Galkayo.

The Puntland Education Policy Paper, Revised Edition and the Education Sector Strategic Plan 2011-2015,54 both address the plight of all types of disabilities. So significant efforts are being made include children with disabilities in educational settings in Puntland. The Ministry will now embark on a process of introducing inclusive education. It will involve passing of an Education Act that is now in draft form, review of strategies, and teacher training.

The concerns of children with disability have been taken up in the UNICEF educational programme in south-central Somalia.55

DISPLACED AND MINORITY CHILDREN: Displaced children in Somalia are a high-risk group for exploitation – child labour, sexual assaults, etc. IDP children belonging to minority groups are particularly disadvantaged. They are often without extended family support and remittance income from the Diaspora. Lacking connections, they may be blocked from access to trading and other employment opportunities by locally dominant clans. They often face exclusion, exploitation and abuse, such as the denial of payment for work they have done.56 In Puntland a large number of the IDPs are from the Darod clan, and they fled to Puntland to be close to their clan members.57

54. The Education Policies and Strategies 2011-2015 is the framework that will guide donor led initiatives aimed at improving education in Puntland.
55. Interview with UNICEF Somalia in Nairobi, 25 August.
57. There are approximately 129,000 IDPs in Puntland, including IDPs from the Mudug region and Sanaag.
IDPs from the Bantu tribe do not have the same support networks. According to IDMC, the IDP children and youths in camps in south-central Somalia are exposed to extremism. It is from there that street gangs, child soldiers, drug dealers and armies are recruited. There are approximately 135,000 IDPs in Jubaland. IDP children make up close to 60% of the IDP population in Somalia.58

**STREET CHILDREN:** Exact numbers are hard to come by, especially for specific regions. UNICEF, however, estimates that 11,000 children59 live on the streets of Mogadishu, while the Hargeisa Child Protection Network estimates that there are between 3,000 and 5,000 street children in Hargeisa. 60 It was not possible to get numbers for Puntland and Jubuland but, according to Save the Children DK (Red Barnet), the problem is rising and should resemble that of Somaliland. In Jubuland, the issue could be even larger due to unrest and conflict creating more child-headed households and orphans.

Children living on the streets meet all kind of human rights violations: sexual exploitation, long hours at work, poor pay, corporal punishment, drug abuse, arbitrary arrests, etc.

According to several child agencies in Somalia (UNICEF, Save the Children, SOS) there is a rapid increase in the population of street children in Somalia, which can be attributed largely to increasing levels of poverty.

Most of these children have no permanent residence, and they move from place to place and from town to town. Family ties may exist but are tenuous and maintained only casually or occasionally.

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8. **Considerations for the Diakonia Rights Programme**

The Diakonia Rights Programme will need to take a number of considerations into account when working to improve the human rights situation in Puntland and Jubuland.

1. Engaging with the Justice system and upholding ‘do no harm’ principles – Diakonia will need to take into account the different judicial mechanisms and the overarching Sharia law in both regions when implementing a rights programme based on international human rights standards. It is crucial that Diakonia defines how they intend to work with the informal as well as the formal structures of the justice system in Somalia.

2. Engaging with state and federal governmental structures – Working at the state level in Puntland and Jubuland, Diakonia needs to be aware of the different interests that could potentially weaken the relationship between the Federal Government and Puntland, as well as Jubuland, which could jeopardize the programme. In Puntland the lack of consensus over how to divide political power in Mudug and Galgaduud has created opportunities to either exploit the impracticality and local disapproval of the central state agreement to form an interim state consisting of Galgaduud and Mudug, or, alternatively, to seek productive forums for cooperation that are necessary to find a workable solution. The relationship between the Jubaland Administration and the Federal Government is very nascent, and there could potentially be issues of tension around handing over control of the port and the responsibility for maritime security to Mogadishu. It is important that Diakonia takes these political tensions into account when working on advocacy issues at the federal and state level.

3. Including local government structures – When working to create an enabling environment for promoting human rights, including the creation of national platforms and safety nets, it will be important to include the local administrations to the extent possible. This is because, in relation to juvenile justice and rehabilitation of former child soldiers, they appear to be very skeptical and, hence, able to dismantle a human rights agenda.

4. Overall it will be crucial to ensure integration and collaboration with other NGOs and UN agencies such as UNICEF, ILO, UNDP, Save the Children, Serendi, etc., in order to facilitate synergy when addressing the needs of children in sectors such as labour, education, rehabilitation.

The following are more specific considerations for Diakonia in relation to:

**Child labour**

1. Child labour
2. Recruitment of child soldiers
3. Juvenile justice

**1. Child labour**

There are considerable opportunities for improving the human rights of children when it comes to child labour. In both Puntland and Jubuland child labour is widely used and the cultural norms are in favour of the practice as long as it does not concern hard labour.

At the government level, Diakonia should work to improve the legal framework related to child rights. This could be done by advocating for the ratification of the Convention on the Rights of the Child. From interviews with ILO staff, it is clear that they are very keen about having more partners on board to put pressure on the Federal Government. Influencing the drafting of Somalia’s first policy on child protection would also be a priority. There is also need for more capacity at the ministerial level to take up these tasks and for technical support to relevant ministries, as well as training of parliamentarians on child rights.

At the civil society level, Diakonia should launch child rights campaigns to educate people trying to go against the social acceptance of child labour by parents. This could go hand in hand with addressing such issues as access to school and poverty reduction initiatives – these being root causes of child labour. Especially in Jubuland, one of the main child violations was perceived to be lack of access to schools. It would be an idea to look into advocating for a model where children can combine work and school, as this would create an initiative for the parents of poor families to send their children to school. It is also important to emphasize that a child is better off with an education then without, when it comes to getting a job.

It is just as important to educate children about their rights. There could be project activities in school – possibly the establishment of ‘child-rights clubs’

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61. Interview, Jakob Mikkelsen, Red Barnet, 10 September 2014, Copenhagen.
described as even more skeptical when it comes to receiving former child soldiers. There are even reports of torture and arbitrary arrest. So there is a need to change the mindset of both the local authorities and the police.

Puntland has just offered amnesty to al-Shabab fighters in the region, as the Galgala Mountains have been ‘liberated’ by Puntland security forces. It could be interesting to work with the Government on the rehabilitation of those accepting the amnesty – and some of these will certainly be children.42

3. Juvenile justice

The area of juvenile justice has been under-prioritized for a long time. UNODC, which is heavily involved in building new prison facilities, does not address the issue of minors – offenders below the age of 18. This means that the new prisons in Garbo, Garowe, Mogadishu do not contain facilities for children. In addition, there is a need to establish a probation system that can handle children’s cases, which are often minor infractions, in order to avoid keeping children locked up with adults. There are some indications from respondents that the xeer system does not work as a good protector of children’s rights. There is room to look at how to deal with children who have committed offences.

Again there is a need for a civic education programme informing parents and professionals on the educational rights of children and youth in short and long-term correctional institutions. Police officers should receive training on the specific rights of children and youth. Also, there is a need for both technical support and enhanced capacity within the Ministry of Justice in Puntland.

62. AMISOM daily media monitoring: Puntland administration gives 30 days amnesty to Al-shabab members, 2 October 2014.
Diakonia was established in 1966 under the name of Swedish Free Church Aid. Ever since, its focus has been on people exposed to injustice and their opportunities to change their situation. In 1984 the name of the organization was changed to Diakonia. The word “diakonia” is Greek, meaning care and service.