

Somalilandlaw.com Recommendations made in 2011 in respect of the then Reform of the Somaliland Police

This Opinion note was previously on this webpage, but has been removed and kept here for reference. None of the points relating to the nature of the Police Force and ranks have come out the reforms, but the remaining points continue to be relevant.

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The objective of the reform should be the entrenchment of a culture of a “police service”, rather than a police force, and of respect for the fundamental rights and freedoms enshrined in the Somaliland Constitution. Strengthening our nascent democracy and ensuring that citizens enjoy fully their fundamental rights requires different policing policies and practices.

Central to any police reform is the ending of the Dictatorship era practice of including the police in the armed forces and making their members subject to Military Law. Article 2 (1) of the 1972 Police Law states categorically that the “police force is an integral part of the armed forces...” and Article 1 and 2 of the 1973 Regulations confirm that the members of the police force shall abide by the Military Laws including the Military Penal Code (see Article 41). {Article 2 of the 1975 Somaliland Police Regulations follows the same tradition and states that “ for the time being, the Police are members of the Armed forces of the Republic of Somaliland” (Ciidanka Boliisku waa qayb ka mid Ciidamada Qalabka sida ee Jamhuuriyada JSL ku meel gaadh ahaan). The Somaliland police officers (and prisons officers) are therefore still subject to the Military laws in respect of all the offences of whatever nature that they may commit. This is above and beyond the police disciplinary offences which are dealt with under the 1975 Regulations}.

Although the Somaliland Police has, as yet, no detailed established rank structure, many of the current command officers have served in the Somali Republic police and army and are more conversant with the military rank structure set out in Article 23 of the 1972 Police Law i.e senior officer ranks of General, Colonel, Major, Captain etc {which are reproduced under Article 19 of the 1975 Regulations}. This, in our view, further reinforces militaristic tendencies. Police forces in many countries maintain discipline and hierarchical structure without necessarily adopting military ranks and laws.}

The maintenance of law and order in a post conflict society, like ours, makes necessary that the police should be suitably equipped and trained to deal both with situations that require fast mobile responses in rural areas and those that require crowd control in urban areas.

Old criminal laws relating to the public order and the old Penal Code provisions that, contrary to the fundamental rights and freedoms enshrined in the Somaliland Constitution, criminalise expressions of the freedoms of assembly and expression, such as some public order offences, offences against the dignity of public officials and criminal libel/slander,

bring the Somaliland Police unnecessarily into an arena where they are seen as enforcing repressive old laws.

The problems of traffic and the ever increasing number of serious accidents which require considerable police involvement also need to be addressed separately.

Somaliland and the region is facing terrorism and this is an ever present challenge for the police force and the other security services, as well as the public at large.

Somalilandlaw.com, therefore, recommends that in the forthcoming 2011 discussions about police reform and the drafting of a new Somaliland Police Law and Regulations, the following legal issues be taken into consideration:

- The new law and regulations must emphasise the principles of accountability, respect for human rights and equality and must be based on the needs and circumstances of the Somaliland people and Republic.
- The police provide a service to the Somaliland nation by protecting their law and order and is no longer a “force” that controls the Somaliland public. Enforcing the law of the land is not the same as imposing the will, lawful or not, of whoever is in power. The rule of law applies to everyone.
- Whilst there will be central divisions or units, the police in the stations in the regions and the district should also be accountable to their local elected district authorities. A system of police liaison committees at local station level will reinforce the community’s confidence in and support for the police. And so will the introduction of auxiliary or part time community police support at village or neighbourhood (xaafad) level.
- It should be declared in the new law that the police are not part of the armed forces and that consequently the members of the police force (service) are subject to their own disciplinary rules in matters relating to the performance of their duties and to the normal criminal and civil laws in all other issues. Article 123 of the Somaliland Constitution deals separately with the national armed forces. The new police law should include transitional provisions which takes note of this fundamental change so that there is clarity about jurisdiction of the courts that can deal with offences during the transitional period.
- In view of the real and present threats to the Somaliland nation, the Police Law should include a provision which allows the President (and the Parliament) under the Emergency provisions of the Constitution to assign some police divisions to serve in military operations in times of constitutionally declared war or emergency. In such situations the police officers affected shall acquire the responsibilities and privileges of the military ranks corresponding to their police ranks.

Notwithstanding the above, and to underline the non-military nature of the Somaliland Police, we recommend that the pre 1960 Somaliland police rank structure (with some modification) be adopted as follows:

- (a) Commissioner
- (b) Deputy Commissioner
- (c) Commander
- (d) Chief Superintendent
- (e) Superintendent
- (f) Chief Inspector
- (g) Inspector
- (h) Cadet Inspector (trainee)
- (i) Senior Sergeant
- (j) Sergeant
- (k) Corporal
- (l) Constable (Askari)
- (m) Cadet Constable (trainee)

On the structure, other than the regional and district stations, some of the central divisions and units can be:

- (a) A Criminal Investigation Division (CID)
- (b) A Traffic Division.
- (c) A Mobile Division.
- (d) A Special Division (which can also deal with anti-terrorism).
- (f) An Immigration & Border Control Division (but not dealing with the issue of Somaliland passports or nationality identity cards).
- (e) A Transport Division.
- (g) A Communication & Equipment Division.
- (e) An Administration & Training Division.
- (f) Community liaison and complaints unit.
- (g) Specialist operational units.
- (f) The Police Academy.
- A complaints unit that deals with public complaints. This unit will have specific responsibility for investigating allegations including those relating to abuse of human rights. Redress through the Somaliland Human Rights Commission Law (which has recently come into force) and the courts shall also be available to complainants.

On staffing of new officers, we would recommend a set aside of places for a fast stream recruitment system for university law graduates who fulfil the necessary job requirements.

Finally there is an urgent need for changing the old laws dealing with public order and the Penal Code provisions that are inconsistent with the modern human rights law. As an immediate step libel and slander criminal laws should be repealed and replaced by civil laws that protect the rights of individuals. This will remove the police from involvement in these issues. The current review of the public order laws must also be speeded up.