



Judicial Intimidation of Lawyers in Somaliland Undermining the Rule of Law

25 February 2021

Two recent orders by the Regional Court of Maroodi-Jeeh in Hargeisa, and the manner in which these decisions were reached, raise serious and troubling questions about the state of the judiciary. The verdicts seek to curtail the freedom of lawyers to speak up about matters of public interest, to represent their clients in a court of law and to express their opinions, rights which are all comprehensively protected by the Constitution and the laws of Somaliland.

On 28 January 2021, the Hargeisa Water Agency (HWA) sent a circular to the residents of Hargeisa. The notice informed them of the Agency's plans to introduce new metres which were described as having "additional benefits both to the users and to Hargeisa Water Agency." All residents were told they must purchase the new metres from the Agency itself. The circular concludes by saying the new metre "is only \$50."

For many families, \$50 is in fact a financial burden they cannot afford, especially at a time when businesses and job opportunities have shrunk, due to the effects of Covid-19, and the cost of living in Hargeisa has risen considerably. It is also a cost many find difficult to justify since the existing metres function perfectly well and there appears to be no reason to throw them out and accept a more costly and unnecessary replacement.

On 11 February 2021, *Talosan Law Firm and Legal Services* released a statement addressed to the public of Somaliland, and in particular to those living in Hargeisa, offering free legal services to those willing to challenge the Agency in a court of law. The purpose of filing a lawsuit, according to the statement, would be to "protest the forced order issued by the Hargeisa Water Agency without authority and lacking reason, with the order itself being legally unwarranted." Describing the measure as "being outside the law" and "a misuse of power by a public office", Talosan also raised other questions.

It does not further the interests of the community being served, nor does it fit the governmental mandate of the Hargeisa Water Agency, which is a governmental organization, not a for-profit company.

A group of residents took up Talosan's offer to mount a legal contest against the circular. Their right to do so is enshrined in the Constitution of Somaliland and in the Somaliland Judiciary Act No.24 of 2003. According to Article 28 (1) of the Constitution, and Article 4(1) of the Judiciary Act, everybody has the right to open legal proceedings in accordance with the law at the relevant court. These Articles state, unequivocally, that everyone seeking to address what they perceive as an injustice, or an offense, is permitted to initiate legal proceedings in accordance with the law.

Nevertheless, the Hargeisa Water Agency submitted a complaint to the Regional Court of Maroodi-Jeeh against the Director of *Talosan* who signed the letter, Abdirahman Mohamed Mohamoud, known as Burhaani, following which the Chairman of the Court, Abdi Qawdhan Abdi, issued a warrant of arrest. The existence of the warrant came to light when the Somaliland Lawyers Association (SOLLA) held a press conference on 15 February 2021 to voice their opposition to the arrest warrant against *Talosan's* Director.

The arrest warrant has no basis in law. It violates the right of a lawyer to represent his or her clients. Articles 13 and 14 of the Somaliland Advocates Law No.30 of 2004 lay out the procedures and processes for disciplining lawyers who fail to meet their legal obligations and the organizations which can exercise the right to censure a lawyer. This lawyer, however, is not being accused of failing to meet his legal obligations. Rather, he is being punished by the court for performing his professional duties. The complaint was not brought against him by an organization empowered by the law, but by the Water Agency, which is not allowed by any law to interfere with a lawyer's work.

The decision of the Regional Court also denies the residents who sought the legal assistance of *Talosan* their constitutional right to open a court case, anywhere in Somaliland, and to be advised or represented by a lawyer. Article 20 of the Somaliland Advocates Law gives every member of the public the freedom to hire a legal practitioner for any legal case.

In their press conference, the lawyers speaking on behalf of SOLLA did not mince their words. One participant asked pointed questions.

If the government refuses to allow people to complain to the judiciary, and it refuses to accept legal discourse, what does it want? The judiciary is a part of the government. It is where legal grievances are registered. The citizens are following the law. If it is against people registering their complaints, and refuses to engage in discourse, especially about the laws of the nation, then what does the government want? To antagonize the public, or to pacify them? Speaking honestly, it is oppressing its people. It is shameful that the government is saying it will not be debated with. Everyone can be debated with. If someone were to bring us a case against the President, the highest ranked individual in the country, the citizens have a constitutional right to have their case submitted.

One of the SOLLA lawyers at the press conference, Hamse Mohamoud Hassan, drew an unfavourable comparison between the courts in Somaliland and one of the courts,

Maxkamadii Bad-Baadada, made infamous by the regime of the late Mohamed Siad Barre.

The Regional Court of Maroodi-Jeeh was quick to respond. On 21 February 2021, the Chairman, Abdi Qawdhan Abdi, ruled that Hamse Mohamoud Hassan is barred from practicing law for a year for an offence described as “contrary to the ethical standards of the legal profession, and in opposition to the dignity of the nation of Somaliland, and that of the judiciary.” According to the Court, this lawyer ran the risk of “a long prison sentence” on the basis that “he spoke to the media.”

In his ruling, the Chairman did not cite the law which gives him the authority to suspend a lawyer’s license and ban him from his practice. He did not, because there is no law which gives any judge this power in the absence of evidence that a crime has been committed.

If the leadership of the judiciary wants the public, as well as the legal profession, to believe that justice exists in Somaliland, and the Constitution and the laws are respected, then it must show them this reality through its own actions, decisions and verdicts. These two orders by the Maroodi-Jeeh Regional Court, by disregarding the constitutional and legal rights of lawyers and of the public, achieve the exact opposite goal. The impact is to sow fear, discourage people from using the courts to settle disputes peacefully and to conclude that the Chairman of the Regional Court of Maroodi-Jeeh does not, in fact, believe in the rule of law.

The judiciary must act and send a strong message to the public that judges cannot be allowed to disregard the Constitution and the laws of Somaliland. The High Judicial Council, the body with the responsibility to discipline the judiciary, should examine how it can best, without delay, lift the ban against Hamse Mohamoud Hassan and dismiss the arrest warrant for Abdirahman Mohamed Mohamoud (Burhaani), which are both contrary to the law. The Council should also take disciplinary action against Judge Abdi Qawdhan Abdi, in accordance with Article 35 (2) (a) of the Somaliland Judiciary Act, and suspend him from his duties, pending an investigation into his professional conduct.

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