A Miscarriage of Justice in the Awo Case

Appeal and Regional Courts Sentence Five Young Boys to Prison Without A Shred of Evidence

30 December 2020

On 6 December 2020, the Court of Appeal of Maroodi-Jeeh, based in Hargeisa, Somaliland, sentenced five young boys to prison for three years and four months. The boys, from Hargeisa Orphanage, and said to be aged from 15-16 years, were found guilty of assisting two other defendants to commit gang-rape against a teenager living at the Orphanage, Awo Harir Rage.

Since first learning of Awo's plight in early May 2020, *Horizon Institute* has supported her family in their pursuit of justice. This includes their efforts to examine how and why the management of Hargeisa Orphanage did not protect Awo and how the government Ministries which oversee the Orphanage and the interests of children, and the Criminal Investigations Department (CID), failed to act in the aftermath. Awo has endured unimaginable suffering that no child should ever have to experience. Awo was fortunate to have a father, Harir Rage, who refused to allow the violence against his daughter to go unpunished, and who has insisted that the Orphanage answer for the negligence which made it possible for a young and troubled girl in their care to fall pregnant.

Awo and her family need and deserve justice. It is the responsibility of the CID, the prosecution, represented by the Attorney-General, and the courts to leave no stone unturned so the true culprits can be identified, charged correctly and brought to trial. Unfortunately, this did not happen. The CID did not carry out a serious and thorough investigation, making it difficult to bring the relevant charges against the appropriate individuals. The prosecution levelled charges against these five defendants that it could not substantiate. The Maroodi-Jeeh Court of Appeal imposed prison sentences without having any concrete evidence to support a conviction, further stating that other accused people had not been investigated by the police. Public anger and demands for a conviction dictated a decision which is plainly wrong in law and which punishes vulnerable children who have no one to defend them.

Despite the flaws in the Appeal Court judgement, the prosecution is now looking to the Supreme Court to hand down even longer sentences against the defendants. The freedom and future of five young boys should not be sacrificed in order to give the impression, because that is all it is, that Awo has received justice. She has not. Neither have these boys who have already been dealt a cruel hand by life when their relatives saw no choice but to place them in the Orphanage. Their poverty and powerlessness should not now, in addition, make it easy for them to be scapegoated for a catalogue of failures by institutions whose job it was to safeguard them.

The lawyer appointed by *Horizon Institute* to represent the five boys has also appealed against the decision. He is asking the Supreme Court to overturn the Appeal Court decision and to order their immediate release.

Why Both the Regional Court and the Appeal Court Decisions are Wrong

The Regional Court, October 2020

In October 2020, seven boys, all living at Hargeisa Orphanage, were brought before the Maroodi-Jeeh Regional Court. By then, they had been detained by the CID for several months after it was alleged that Awo Harir Rage, also living at the Orphanage, had been violated. The prosecution charged all the defendants with gang rape under Article 398 of the Penal Code. The prosecution was unable to state the exact date of the rape and calculated the time roughly based on the victim's pregnancy.

At the request of the prosecution, Awo, aged 15, was examined in July by three doctors at Hargeisa Group Hospital to establish her mental capacity. On 3 August 2020, they signed a letter putting Awo's mental capacity at 6 years, making it impossible for her to give consent.

Defendants 1 and 2 admitted to having had sex with the victim, but they denied rape. The other five defendants said under oath that they had, at no time, been involved intimately with the victim, saw such a crime taking place or known a crime had been perpetrated. What they did acknowledge is that Defendant 1 had asked them to call Awo for him on a number of occasions, but said they were unaware of his reasons for wanting to see her.

The prosecution produced 4 people to support their arguments against the defendants. Three of the four witnesses were part of the management of the Orphanage and the fourth was the investigator himself. All of them stated they had never witnessed an act of rape against Awo. On the contrary, according to their testimony, no rape had been committed. But they said Awo had told them about consensual sex with a number of people, a statement that must be disregarded given the medical finding that Awo is not capable of giving consent or understanding what is happening, a fact that is evident in meeting Awo. The accounts from the four witnesses are based entirely on hearsay. They do not meet the requirements of the Penal Code and the Criminal Procedure Code according to which the witnesses must offer first-hand testimony based on what they saw with their own eyes.

The prosecution also produced the 3 August 2020 letter signed by the three doctors at Hargeisa Group Hospital.

On this extremely flimsy basis, the five boys who did not confess, and against whom no evidence was produced for any crime, were sentenced to 6 months' imprisonment for which there was no legal justification. Since the boys had already been held at the CID for 6 months, they were expected to be released and the judgement was largely seen as a symbolic effort to appease public concern without inflicting further punishment. Defendants 1 and 2, who had confessed, were given three year sentences.

But the prosecution immediately challenged the outcome and looked to the Court of Appeal for longer sentence on all the defendants.

Mistakes by the Prosecution

Before submitting a case to the court, the Penal Code of Somaliland, in common with legislation throughout the world, requires the prosecution to produce the necessary evidence to: (1) Establish that a crime has been committed and (2) that the defendants are the people responsible for this crime. If either of these elements are missing, the prosecution should either order further investigations or close the case for lack of sufficient evidence.

The prosecutor assigned to this case did not follow these standard procedures. He did not provide any evidence to show the crime of gang rape had taken place or that these seven defendants are all directly implicated. All the prosecution had was a confession from two of the defendants and it had nothing against the other five.

While Horizon has serious misgivings about the judgement against the two defendants who confessed to involvement with Awo and plans to revisit their case after further research, this statement focuses on the other five boys who have consistently maintained their innocence.

Mistakes by the Court

Courts are an essential pillar of every justice system. It is ultimately the courts to which men, women and children all over the world look to for fairness and to correct errors which might have been made along the way by the police and the prosecution. As the final arbiter of justice, it is absolutely crucial to have courts run by judges who are both willing, and able, to fulfil the onerous responsibilities placed on their shoulders.

In October 2020, the Regional Court of Maroodi-Jeeh did not meet its obligations. The Court can only pass sentence if it is satisfied that the crime being charged by the prosecution, namely the commission of gang rape as defined by Article 398 of the Penal Code, had been proven beyond reasonable doubt, and that the five defendants were the perpetrators of this crime. The case against the five defendants who pleaded not guilty

should have been dismissed given the absence of evidence, as required by Article 115 of the Criminal Procedure Code. But the Court did not act accordingly. It also refused the request by their lawyer that they should be released as no proof of their guilt had been presented.

Since the testimony of the prosecution witnesses was entirely hearsay, the Court should have dismissed their statements as laid down in Article 184 (a) of the same Code. But it did not this either. They should have been acquitted. Instead, the five boys were given prison sentences of 6 months, for which there is no basis in law since no crime was proved in a court of law. The Court, instead, relied on Articles in the Code (109 and 40) which do not impose a punishment.

Defendants 1 and 2 were found guilty of gang rape and sentenced to three years in prison.

The prosecution, however, was not satisfied and immediately asked the Court of Appeal to review the judgement.

The Court of Appeal, December 2020

A Judgement That Raises More Questions

During the trial at the Maroodi-Jeeh Court of Appeal, the prosecution did not present any new evidence. Relying on the same facts and witness statements, the Court, on 6 December 2020, increased the sentences for Defendants 1 and 2 to 8 years, arguing they had engaged in gang rape and raised the prison term for the 5 other defendants from 6 months to three years and four months.

Taking a completely new direction with respect to the five boys, the Court argued Article 398 had not been proven against the 5 boys, but that they were guilty of "assisting the commission of a crime" under Article 298 of the Penal Code. The Court did not provide any evidence whatsoever to substantiate this new claim.

In an astonishing admission that calls its entire judgement into question, the Court itself acknowledged that there are indeed people at large who have yet to be investigated, underlining a critical point that Awo's family has repeatedly stated publicly. In Paragraph 8, Page 18, the Court wrote: "It has become clear to the Court of Appeal that there are other accused who have not been investigated by the police, who have not been charged and whose names have not been included in the original charge sheet. But the since the Court does not accuse people, it reached a judgement based on the case with which it was presented."

Nowhere is it stated how "it has become clear to the Court" that other people accused of the crimes against Awo remain at large and have not been investigated by the police. Armed with this knowledge, the Court should have dismissed the case against *all* the defendants.

It should also have criticised both the CID and the prosecution for their poor work and told them to go back to square one and carry out their responsibilities in a competent manner.

Horizon Institute believes strongly in the importance of public interest in the criminal justice system and public scrutiny of the workings of government, including the justice sector. The best way to build accountability in institutions is to ensure that the public they serve are informed about their work, and feel both empowered and interested in holding such institutions to account. In this context, the unusual interest generated by the Awo case, which touched people throughout Somaliland and beyond, is to be welcomed.

The members of the public who demanded justice for Awo were not, however, merely seeking a conviction. They asked that the culprits, that is all of them, be investigated, apprehended and brought to a court of law. The judgement handed down by the Maroodi-Jeeh Court of Appeal is a long way away from what the public had the right to expect. It is now incumbent on the Supreme Court to make certain Awo gets the full measure of justice she deserves. And when she does, there can be little doubt that these five boys will be exonerated, unless new credible evidence comes to light.

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