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Somalia: Journalist conviction upheld, woman who reported rape cleared

Freelance journalist Abdiaziz Abdnur Ibrahim has been found guilty at an appeals hearing, following his investigation into an alleged rape involving government forces which led to his arrest on 10 January 2013. The Appeals Court acquitted the woman who had reported the rape, after the lower court had found her guilty of insulting a national institution and sentenced her to one year in prison. Abdiaziz Abdnur Ibrahim's conviction continues to undermine media freedom in one of the most dangerous countries in the world for journalists. It also brings into serious doubt the Somali authorities' commitment to human rights and the rule of law.

On 3 March 2013, Abdiaziz Abdnur Ibrahim was found guilty of offences by Somalia's Appeals Court and handed a six month sentence, reduced from the initial sentence of one year. It is unclear which laws formed the basis for his conviction on appeal. On 5 February 2013, Abdiaziz Abdnur Ibrahim had been found guilty of insulting a national institution, and of a charge under Shari'a (Islamic) law. The woman who alleged she had been raped by government forces was cleared on appeal of insulting a national institution.

The verdict stems from an unpublished interview by Abdiaziz Abdnur Ibrahim with the woman on 8 January 2013 in which she said she had been raped by government security forces in August 2012. The arrest and charges of both seem to be linked to an Al Jazeera report published on 6 January 2013 on rape and other forms of sexual violence in settlements for internally displaced people in Mogadishu. Abdiaziz Abdnur Ibrahim was not involved in the production of the Al Jazeera report. Even if he had been involved, this would not have constituted an internationally recognizable criminal offence or legitimate grounds for detention.

It is unclear under what law Abdiaziz Abdnur Ibrahim was charged and convicted during the appeals trial. The initial conviction on 5 February 2013 appears to have been for his alleged involvement in the Al Jazeera report. In contrast, the Appeals Court judge referred to a lack of respect for national laws and of the Somalia media law. The Somalia media law is not currently in force. He did not refer to any specific legal provisions under which he found Abdiaziz Abdnur Ibrahim guilty, and it is unclear if his verdict relates to the initial charges.

Amnesty International is concerned at the initial charges, which should never have been pressed against either Abdiaziz Abdnur Ibrahim or the woman and their conviction at the lower court for a broad and vaguely-defined provision which directly criminalizes legitimate criticism of state institutions. The organization is similarly concerned with the Appeal Court's ruling concerning Abdiaziz Abdnur Ibrahim, which does not seem to uphold the lower court's conviction, but rather to convict him of an unknown offence that the Court did not ground in the Penal Code.

While welcoming the decision of the Appeals Court to overturn the verdict against the woman, Amnesty International remains concerned that the prosecution of this woman for reporting she had been raped will have a lasting effect and deter other women who experience sexual violence from reporting to the authorities.

The case has seen numerous due process violations from the outset, including holding the journalist without charge for 19 days, intermittent denial of access to lawyers, and government officials publicly declaring the defendants guilty before the trial.

During the initial trial, the prosecutor failed to provide any evidence to justify a conviction for an internationally recognizable criminal offence. One witness called by the prosecution was a nurse who concluded that the woman was not raped after conducting a “finger test,” a degrading and discredited practice. The judge refused to allow the defence lawyer to present witnesses to the court; additionally, he was not allowed to present any medical evidence to rebut the prosecution’s assertions.

During the appeals hearing on 20 and 27 February 2013, the defence presented documented evidence that Abdiaziz Abdnur Ibrahim had not been involved in the Al Jazeera report of 6 January 2013. The defence also presented three witnesses to support the case of the woman who had reported being raped.

Amnesty International considers Abdiaziz Abdnur Ibrahim a prisoner of conscience, imprisoned solely for the peaceful exercise of his right to freedom of expression and calls for his immediate and unconditional release.

The government continues to state its commitment to legal reform, but this must be translated into practice by ensuring that no-one is prosecuted for peacefully exercising their human right to freedom of expression, and that laws criminalizing such expressions are repealed. The authorities must also conduct comprehensive, impartial investigations into all allegations of rape and other gender-based attacks, including the allegation made by the woman in this case. The authorities must prosecute those suspected of perpetrating gender-based violence where there is sufficient admissible evidence and provide effective protection, as well as ensuring reparations to rape survivors.

Amnesty International calls for Abdiaziz Abdnur Ibrahim’s conviction to be quashed and for his unconditional release.